

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

76-1362

**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

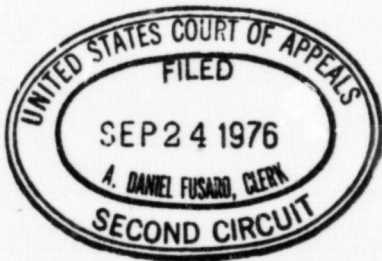
Appellee,

-against-

CHEUNG KIN PING,

Defendant-Appellant.

Appellant's Appendix



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UNITED STATES COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA

v.

Case No. 75 Cr. 614

"CHO KWOK CHUNG," (CHEUNG KIN
PING), et al.

Judge Brieant

- - - - - x

PERTINENT DOCKET ENTRIES

Indictment filed.

12/1/75 Gx notice of readiness for trial

1/22/76 Notice of motion for order dismissing indictment,
suppression, production, etc.; memo endorsed on
motion, denied.

2/4/76 Warrant of arrest (6/23/750; appearance bond in
sum of \$15,000.

4/19/76 Affd of U.S. Atty. in opposition to various motions
by defendant Cheung Kin Ping.

4/19/76 Gx memo of law

4/20/76 Filed trial transcript of 4/20/76.

4/27/76 Reply memo in support of def. Cheung's motion.

4/27/76 Notice of motion and affidavit for reargument and
reconsideration and for any evidentiary hearings
to suppress any and all statements allegedly made
by def. on or about 4/6/72 in Miami, Fla.

4/27/76 Letter from U.S. Atty. Thomas Engel to Hon.
Charles Brieant dated 5/28/76.

6/7/76 Request on Voir dire

6/7/76 Gx proposed examination of prospective jurors

6/21/76 Def Cheung Kin Ping's request to charge

6/21/76 Gx request to charge

7/26/76 Notice of Appeal (Cheung Kin Ping). Leave to proceed in forma pauperis is granted.

7/26/76 Judgment and probation/commitment order (Cheung Kin Ping). Deft committed to custody of Attorney General for imprisonment for a period of 7 years on each of counts 1 and 6 to run concurrently with each other. Imposition of sentence on count 19 is suspended. Deft placed on probation for a period of 6 months to begin immediately subject to the standing probation order of this court. Pursuant to §851 of Title 21, U.S. Code deft. placed on special parole for a period of 3 years, commencing upon expiration of confinement. Deft. continued on bail, until he posts bail pending appeal fixed in the amount of \$15,000 cash of surety.

7/26/76 Surety bond pending appeal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA, :

- v - :

LARRY LOMBARDI, :
曹國棟 (SAMMY CHO), a/k/a "Cho :
Kwok Chung," :
張金平 (CHEUNG KIN PING), a/k/a :
"Siao Moo Bee," :
李蔭棠 (LAI MONG WAH), a/k/a :
"Wah Je," a/k/a "Gloria" :
a/k/a "Big Sister", :
張鈞慶 (CHANG YU CHING), :

Defendants. :

INDICTMENT

75 Cr. 614

-----x
COUNT ONE

The Grand Jury charges:

1. On or about the 1st day of January, 1970, and continuously thereafter up to and including the 30th day of April, 1972, in the Southern District of New York, and elsewhere, LARRY LOMBARDI, SAMMY CHO, a/k/a "Cho Kwok Chung", CHEUNG KIN PING, a/k/a "Siao Moo Bee," LAI MONG WAH, a/k/a "Wah Je," a/k/a "Gloria," a/k/a "Big Sister", CHANG YU CHING, the defendants, and others to the Grand Jury known and unknown, including Liu Yeuh Han, a/k/a "Dr. John Liu," Yui Kwei Sang, a/k/a "George Yui," Ting Yee Fong, a/k/a "Doo Moo Bee," Ka Chung Fuk, John Doe, a/k/a "Ah Dee," John Doe, a/k/a "Ah Sung," Keung Sui Fung, a/k/a "Chiang Shao Fung," Americo Spagnuolo, a/k/a "Rick," John Doe, a/k/a "Po Leung", named herein as co-conspirators but not as defendants, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other to violate, prior to May 1, 1971, Sections 173 and 174

of Title 21, United States Code, and, on and after May 1, 1971, to violate Sections 812, 841 (a) (1), 841 (b)(1)(A), 951 (a)(1) and 952 of Title 21, United States Code.

2. It was a part of said conspiracy that prior to May 1, 1971, the said defendants and co-conspirators, unlawfully, wilfully, knowingly and fraudulently would import and bring into the United States large amounts of narcotic drugs from and through Hong Kong, British Crown Colony, and other countries to the Grand Jury unknown, in violation of Sections 173 and 174 of Title 21, United States Code.

3. It was further a part of said conspiracy that prior to May 1, 1971, the said defendants and co-conspirators unlawfully, wilfully and knowingly would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a quantity of narcotic drugs, the exact amount and nature thereof being to the Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

4. It was further a part of said conspiracy that on and after May 1, 1971, the said defendants and co-conspirators unlawfully, wilfully and knowingly would import into the United States from a place outside thereof, to wit, Hong Kong, British Crown Colony, Schedule I narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 951 (a)(1) and 952 of Title 21, United States Code.

5. It was further a part of said conspiracy that on and after May 1, 1971, the said defendants and co-conspirators unlawfully, wilfully and knowingly would distribute and possess with intent to distribute Schedule I narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841 (a)(1) and 841 (b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. In the summer of 1970 defendant CHANG YU CHING showed defendant LAI MONG WAH a sample of heroin in a Mah Jongg Club located at Number 10, The Bowery, New York, New York.
2. In the winter of 1970-71 a sailor entered the Golden Star Bar, 51 East Broadway, New York, New York and spoke to defendant LAI MONG WAH.
3. In the winter of 1970-71 defendant LAI MONG WAH received approximately three pounds of heroin off a ship docked at Staten Island, New York.
4. In or about March, 1971, co-conspirators Yuin Kwei Sang and Liu Yueh Han met in Room 1104 of the Woodner Hotel, 3636 16th Street, N.W., Washington, D.C.
5. In or about March, 1971, co-conspirator Liu Yueh Han paid co-conspirator Yuin Kwei Sang \$15,000 in the vicinity of the Peking Restaurant, 5522 Connecticut Avenue, N.W., Washington, D.C.

6. In or about March, 1971, defendant LAI MONG WAH sent approximately \$10,000 from New York, New York to defendant CHANG YU CHING in Hong Kong, British Crown Colony.

7. In or about September, 1971, a sailor delivered two coffee tables, each containing approximately two and a half pounds of heroin to an apartment rented by defendant LAI MONG WAH at 133 East 4th Street, New York, New York.

8. In or about September, 1971, defendant CHEUNG KIN PING and co-conspirator John Doe, a/k/a "Po Leung", received approximately eight ounces of heroin at 80 First Avenue, New York, New York.

9. On or about September 29, 1971, co-conspirator Liu Yueh Han gave another person \$2500 in the Peking Restaurant 5522 Connecticut Avenue, Washington, D.C.

10. In or about September, 1971, defendant, SAMMY CHO distributed approximately 15 pounds of heroin at 274 Mott Street, New York, New York.

11. In or about September, 1971, defendant LARRY LOMBARDI, at 95 East Broadway, New York, New York, received approximately two kilograms of heroin and tested it by boiling a sample of it, contained in a test tube, in mineral oil.

12. On several occasions in or about September, 1971, defendant LARRY LOMBARDI received quantities of heroin contained in five-ounce bags totaling approximately 15 pounds of heroin.

13. In or about October, 1971, defendant SAMMY CHO transported approximately 20 pounds of heroin in a red Studebaker from 274 Mott Street to 133 East 4th Street, New York, New York.

14. On several occasions in or about October, 1971, defendant LARRY LOMBARDI received quantities of heroin contained in five-ounce bags, totaling approximately 20 pounds of heroin.

15. In or about December, 1971, defendant LARRY LOMBARDI received approximately one pound of heroin at 95 East Broadway, New York, New York.

16. In or about November, 1971, defendant LARRY LOMBARDI and co-conspirator Americo Spagnuolo counted approximately \$30,000 at 95 East Broadway, New York, New York.

17. On or about December 1, 1971, defendant CHEUNG KIN PING flew from New York, New York to Hong Kong, British Crown Colony.

18. In or about December, 1971, defendant CHANG YU CHING received approximately \$10,000 from defendant LAI MONG WAH in Hong Kong, British Crown Colony.

19. On or about December 22, 1971, defendant LAI MONG WAH, negotiated approximately \$14,000 in personal money orders through the Hang Seng Bank, Hong Kong, British Crown Colony.

20. In or about January, 1972, defendants LAI MONG WAH, CHEUNG KIN PING, and SAMMY CHO met in the Wing Wah Restaurant, Hong Kong, British Crown Colony.

21. On or about January 3, 1972, defendant SAMMY CHO negotiated approximately \$5,000 in personal money orders through the Chase Manhattan Bank, Hong Kong, British Crown Colony.

22. On or about January 26, 1972, defendants LAI MONG WAH, CHEUNG KIN PING, and SAMMY CHO met in the Hotel Singapore, 54 Kennedy Road, Hong Kong, British Crown Colony.

23. On or about February 12, 1972, on a dock in Hong Kong, British Crown Colony, co-conspirator Ting Yee Fong received approximately 22 pounds of heroin in a suitcase and carried it aboard the M/V Laomedon.

24. On or about March 30, 1972, co-conspirator Ting Yee Fong placed a telephone call from Panama, Canal Zone to defendant CHEUNG KIN PING in New York, New York.

25. On or about April 5, 1972, defendants CHEUNG KIN PING and SAMMY CHO flew from New York, New York to Miami, Florida.

26. On or about April 5, 1972, defendants CHEUNG KIN PING and SAMMY CHO possessed approximately 22 pounds of heroin at Dodge Island Seaport, Miami, Florida.

(Title 21, United States Code, Section 846).

COUNT TWO

The Grand Jury further charges:

In or about January, 1971, in the Southern District of New York, LAI MONG WAH, a/k/a "Wah Je", a/k/a "Gloria", a/k/a "Big Sister" and CHANG YU CHING, the defendants, unlawfully, wilfully, knowingly and fraudulently did import and bring into the United States contrary to law a narcotic drug, to wit, approximately three pounds of heroin, in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174; Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

In or about August, 1970, in the Southern District of New York, LAI MONG WAH, a/k/a "Wah Je", a/k/a "Gloria", a/k/a "Big Sister", the defendant, unlawfully, wilfully and knowingly did receive, conceal, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately three pounds of heroin, after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs may find necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Section 173 and 174.)

COUNT FOUR

The Grand Jury further charges:

In or about September, 1971, in the Southern District of New York, LAI MONG WAH, a/k/a "Wah Je", a/k/a "Gloria", a/k/a "Big Sister" and CHANG YU CHING, the defendants, unlawfully, knowingly, and intentionally did import into the United States from a place outside thereof, to wit, Hong Kong, British Crown Colony, a Schedule I narcotic drug controlled substance, to wit, approximately five pounds of heroin.

(Title 21, United States Code, Section 951(a)(1) and 952).

COUNT FIVE

The Grand Jury further charges:

In or about the month of September, 1971 in the Southern District of New York, LAI MONG WAH, a/k/a "Wah Je", a/k/a "Gloria", a/k/a "Big Sister", the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately five pounds of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

COUNT SIX

The Grand Jury further charges:

In or about the month of September, 1971, in the Southern District of New York, CHEUNG KIN PING, a/k/a "Siao Moo Bee", the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately eight ounces of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

COUNT SEVEN

The Grand Jury further charges:

In or about the month of September, 1971, in the Southern District of New York, LAI MONG WAH, a/k/a "Wah Je," a/k/a "Gloria" a/k/a "Big Sister", and LARRY LOMBARDI, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one kilogram of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

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COUNT EIGHT

The Grand Jury further charges:

In or about the month of September, 1971, in the Southern District of New York, SAMMY CHO, a/k/a "Cho Kwok Chung", the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately five pounds of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT NINE

The Grand Jury further charges:

In or about the month of September, 1971, in the Southern District of New York, LARRY LOMBARDI, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TEN

The Grand Jury further charges:

In or about the month of September, 1971, in the Southern District of New York, SAMMY CHO, a/k/a "Cho Kwok Chung", the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately ten pounds of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT ELEVEN

The Grand Jury further charges:

In or about the month of October, 1971, in the Southern District of New York, LARRY LOMBARDI, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT TWELVE

The Grand Jury further charges:

In or about the month of October, 1971, in the Southern District of New York, LARRY LOMBARDI, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTEEN

The Grand Jury further charges:

In or about the month of October, 1971, in the Southern District of New York, SAMMY CHO, a/k/a "Cho Kwok Chung" the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately twenty pounds of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT FOURTEEN

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The Grand Jury further charges:

In or about the month of October, 1971, in the Southern District of New York, LARRY LOMBARDI, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT FIFTEEN

The Grand Jury further charges:

In or about the month of October, 1971, in the Southern District of New York, LARRY LOMBARDI, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT SIXTEEN

The Grand Jury further charges:

In or about the month of November, 1971, in the Southern District of New York, LARRY LOMBARDI the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

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COUNT SEVENTEEN

The Grand Jury further charges:

On or about the 23rd day of November, 1971, in the Southern District of New York, LARRY LOMBARDI, the defendant, unlawfully, intentionally and knowingly did possess possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT EIGHTEEN

The Grand Jury further charges:

In or about the month of December, 1971, in the Southern District of New York, LARRY LOMBARDI, the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one pound of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT NINETEEN

The Grand Jury further charges:

On or about the 30th day of March, 1972, in the Southern District of New York, CHEUNG KIN PING, a/k/a "Siao Moo Bee", the defendant, did unlawfully, knowingly, and intentionally use a communication facility, to wit, a telephone in committing, causing and facilitating the commission of an act which is a felony under the federal narcotics laws [Title 21, United States Code, §§ 801 et seq.], to wit, the conspiracy charged in Count One of this indictment.

(Title 21, United States Code, Section 843(b)).

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rkjb

MR. ENGEL: The name Keung Sui Fung. If I didn't, I could just black it out.

THE COURT: Are you agreeable that he black it out?

MR. SLEPIAN: Yes.

I will stipulate that Mr. Engel may blacken out that portion of the name Keung Sui Fung so it's not legible to the jury for their perusal in their deliberations.

MR. ROSENTHAL: I will so stipulate.

THE COURT: What is the next name, Americo Spagnuolo?

MR. ENGEL: That was Lombardi's nephew. There is no evidence in the record.

THE COURT: If there is no evidence about Spagnuolo, I assume they want to expand their position to include him.

I understand he is also in an overt act. Can we get him out of the overt act?

MR. ENGEL: It has to do with counting \$30,000.

THE COURT: He will agree to blacken it out.

Bring in the jury.

(Jury present.)

THE COURT: Mrs. Shapiro, members of the jury. We are now at that stage of the trial where you will soon

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undertake your final function as jurors and that is, acting as ministers of justice, and here you perform one of the most sacred obligations of American citizenship and you are to discharge this final duty in an attitude of complete fairness and impartiality, and as I mentioned to you when you were originally selected, you are to act without bias or prejudice for or against the government or any defendant as parties to this controversy, and let me state the fact that the government is a party entitles it to no greater consideration than that accorded to any other party to a litigation in this court.

By the same token, it's entitled to no less consideration. All parties, individuals and government alike stand as equals before the bar of justice in this court.

Your final role here is to pass upon and decide the fact issues in this case. You are the sole and exclusive judges of the facts. You determine the weight of the evidence. You draw the reasonable inferences from the evidence and you resolve such conflict as there may be in the evidence, and I will later discuss with you how you determine the credibility or truthfulness of the witnesses.

My final function here is to instruct you as to the law and as I mentioned earlier, it's your duty to accept these instructions as to the law and then to apply

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1
2 them to the facts as you may find them to be. You are not
3 to take any single instruction which I may give you alone
4 as stating the law but you must consider all of my in-
5 structions taken together as a whole.

6 With respect to any fact matter, it is your recol-
7 lecti n, yours alone that governs. Anything that the lawyers
8 either for the government or a defendant may have said with
9 respect to matters in evidence or during the trial or a
10 question or an argument or any summations, is not to be
11 substituted for your own recollection of what the evidence
12 shows. So too, anything I might say during the trial or
13 anything I might refer to while giving these instructions
14 as to any matter in evidence, is not to be taken in place
15 of your own recollection.

16 Now, the attorneys in the case not only have the
17 right but it's their duty to make objections and to press
18 strongly whatever legal theories or arguments they may
19 have. They are simply performing their duty and any evi-
20 dence as to which an objection was sustained by the court
21 and any evidence ordered stricken out by the court must
22 be disregarded in its entirety. Please put out of your
23 mind any exchanges which may have occurred during the trial
24 between the lawyers or between any attorney and the court.
25 It's not my function to favor one side or the other, or to

1 rkjb

2 criticize anybody in any way whatsoever or to indicate to
3 you, the jury, in any way that I may have any opinion as
4 to the truthfulness of any witness or as to the guilt or
5 innocence of a defendant. That is your function, it's
6 yours alone and I leave it entirely to you, so please
7 don't assume I hold any opinion in any matters concerning
8 this case. Please don't reach any conclusion that I may
9 have some attitude or that I may tend to favor one side
10 or the other in the case, I do not.

11 Please don't regard me as impatient. I have a
12 number of cases. It's my obligation to get the trial
13 conducted, as expeditiously as can be done and still per-
14 mit a full disclosure of all evidence to you. That is
15 what I have been trying to accomplish during these two
16 weeks we have been together.

17 You will all remember I told you in the beginning
18 that the indictment here itself is no evidence of the
19 crimes charged. Instead, an indictment is merely the
20 method or procedure under the law, whereby persons accused
21 of crimes by a grand jury are brought into court to have
22 their case determined by trial jurors such as yourselves.
23 Therefore, the indictment must be given no evidentiary
24 value whatsoever, and it's to be treated by you only as
25 an accusation. It's not evidence or proof of a defendant's

1 rkjb

2 guilt and no weight or significance whatsoever is to be
3 given to the fact that an indictment has been returned
4 against any defendant. Each of these defendants have
5 pleaded not guilty and thus the government has the burden
6 of proving the charges beyond a reasonable doubt to your
7 satisfaction if it's to prevail.

8 A defendant does not have to prove his or her
9 innocence. On the contrary, each defendant is presumed
10 to be innocent of the accusations contained in the indict-
11 ment. This presumption of innocence was in the defendant's
12 favor at the start of the trial as I believe I told you
13 when you were selected and it continued in their favor
14 throughout the entire trial and it's in their favor now
15 and remains in their favor during the course of your
16 deliberations in the jury room. The presumption of inno-
17 cence is removed only if and when you, the jury, are
18 satisfied that the government has sustained its burden
19 of proving the guilt of the defendant whose case you are
20 then considering beyond a reasonable doubt and of course
21 unless you are so convinced, you must find him or her
22 not guilty on the particular charge that you are considering.

23 Now, the question naturally comes up, what is a
24 reasonable doubt. Well, members of the jury, these words
25 almost define themselves. That is, a doubt founded on

1 rkjb

2 reason arising out of the evidence in the case or lack of
3 evidence. It's a doubt which a reasonable person has after
4 carefully weighing all the evidence. Reasonable doubt is
5 a doubt that appeals to your reason, to your judgment, to
6 your common sense and your human experience. It's not
7 caprice or whim or speculation or conjecture or suspicion.
8 It's not an excuse to avoid the performance of an unpleasant
9 duty and it's not sympathy for a defendant. If after a
10 fair and impartial consideration of all the evidence in
11 the case you can candidly and honestly say you are not
12 satisfied with the guilt of a defendant, that you do not
13 have an abiding conviction of the defendant's guilt of a
14 particular charge; in sum, if you would have such a doubt
15 that would cause you as prudent persons to hesitate before
16 acting in matters of importance to yourselves, then you
17 have a reasonable doubt and in that circumstance, it's
18 your duty to acquit.

19 On the other hand, if after such an impartial and
20 fair consideration of all the evidence you can candidly
21 and honestly say you do have an abiding conviction of the
22 defendant's guilt, such a conviction as you would be willing
23 to act upon in the important weighty matters of the personal
24 affairs of your own life, then you have no reasonable doubt
25 and under those circumstances, it's your duty to convict.

1 rkjb

2 Reasonable doubt does not mean a positive cer-
3 tainty or beyond all possible doubt. If that were the
4 rule, few people, however guilty they might be would ever
5 be convicted because it's almost impossible for a person
6 to be absolutely and completely convinced of any disputed
7 fact which is by its nature not susceptible to mathematical
8 certainty.

9 For that reason, the law in a criminal case is,
10 it's sufficient if the guilt of a defendant is established
11 beyond a reasonable doubt, not beyond all possible doubt.

12 Now, the indictment in this case, member of the
13 jury, contains 19 counts. However, of the 19 counts in
14 the indictment, only 8 counts concern these defendants on
15 trial before you. The indictment names five defendants
16 in all and Cheung Kin Ping and Lai Mong Wah are the only
17 defendants on trial before you and they are the only per-
18 sons with respect to whom you will be asked to announce a
19 verdict, although as I will explain to you shortly in
20 considering their cases, you may have to determine the
21 nature of the participation and activities if any of
22 Larry Lombardi, Sammy Cho, Chang Yu Ching, Yui Kwei Sang,
23 also known as George Yui, Ting Yee Fong or others whom
24 you may find to have been co-conspirators, and in this
25 connection, you are not to concern yourselves with or

1 rkjb

2 speculate upon the reasons why these two persons are being
3 tried together here today or why the other named persons
4 in the indictment, the other defendants' named, are not
5 presently on trial before you. Those are the matters
6 which are solely for the court and it's not a matter of
7 your concern whatsoever.

8 In the determination of whether or not guilt is
9 proven beyond a reasonable doubt, you must bear in mind
10 that guilt is personal. The guilt or absence of guilt of
11 a defendant on trial before you must be determined sepa-
12 rately with respect to him or her, solely on the evidence
13 presented against him or her, or the lack of evidence.
14 Accordingly, you will announce separate verdicts for each
15 defendant and separate verdicts as to each of the 8 counts
16 which are on trial here before you and as you will learn
17 when I read the indictment to you shortly, both the defen-
18 dants are not mentioned in each of the 8 counts.

19 Now, in the course of my discussions with you
20 this morning, if I fail to say him or her or he or she
21 at any time in mentioning any of the legal principles that
22 I will discuss as we go along, I want you to imply and
23 understand that is what I meant to say to you and obviously
24 the law is the same and while I will try to be precise, if
25 I should just say him or he and fail to say he or she,

1 rkjb

2 want you to understand that is merely an omission on my
3 part.

4 For your guidance in considering the evidence you
5 have heard in the past few days, I must tell you there are
6 two classes of evidence recognized and admitted in courts
7 of justice upon either of which the jurors may find an
8 accused guilty of a crime. One is called direct evidence
9 and the other is called circumstantial evidence. Direct
10 evidence tends to show the fact in issue without any need
11 for any other amplification, although of course there is
12 also the question whether it's to be believed.

13 Circumstantial evidence tends to show facts from
14 which the fact in issue may reasonable be inferred. It's
15 evidence that tends to prove the fact in issue by proof
16 of other facts which have a legitimate tendency to lead
17 the mind to infer or conclude that the facts sought to be
18 established are true.

19 There is a traditional and I guess a simple example
20 which is given of the use of circumstantial evidence and
21 let's assume for a moment that you were in one of the
22 lovely, old-fashioned courtrooms upstairs high in the build-
23 ing that have windows that look out on the street below and
24 sometimes it's difficult merely by looking out of a window
25 of a tall building to determine whether it's raining or not,

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2 but if you look out of the window, look down on the street
3 you see people passing by in the street have their umbrellas
4 up, you will usually come to the conclusion it must be
5 raining. You have direct evidence, the evidence of your
6 own senses that tells you the umbrellas are up, you can
7 see them, and that evidence constitutes circumstantial evi-
8 dence from which you are entitled to draw the inference or
9 reach the conclusion it must be raining. In other words,
10 circumstantial evidence consists of facts proved from which
11 the jury may infer by a process of reasoning other facts
12 which may be in dispute and circumstantial evidence if be-
13 lieved is of no less value than direct evidence for in
14 either case, you must be convinced beyond a reasonable
15 doubt of the guilt of a defendant before he or she may be
16 convicted of any crime.

17 Now, in determining what evidence you will accept,
18 you must make your own evaluation of the testimony given
19 by each of the witnesses and determine what you believe to
20 be the truth and the degree of weight to which you choose
21 to give that testimony. The testimony of a witness may
22 fail to conform to the facts as they occurred because the
23 witness didn't actually see or hear what he testified about,
24 or because he is intentionally telling a falsehood or be-
25 cause his recollection of the events, his memory, is

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2 faulty, or because he hasn't expressed himself clearly in
3 giving testimony. There is no magic formula by which you
4 can evaluate testimony. You bring to the courtroom all of
5 the everyday experiences and background of your own lives.
6 In your everyday affairs you determine for yourselves the
7 reliability of statements made to you by other people and
8 the same tests you use in your everyday dealings and every-
9 day life are the tests that you will apply in your jury
10 deliberations.

11 You may of course consider the interest or lack
12 of interest of any witnesses in the outcome of this case.
13 A witness who is interested in the outcome of the case is
14 not necessarily unworthy of belief, but the interest of a
15 witness is a factor ~~of~~ a possible motive which you may
16 consider in determining the weight and credibility to be
17 attributed to his testimony and in doing this you may also
18 consider whether the testimony of a witness is corroborated
19 or borne out by the testimony of others, or by documentary
20 evidence or exhibits.

21 You may consider the bias or prejudice of a wit-
22 ness if there be any and the manner in which the witness
23 gives his testimony on the stand, the appearance and con-
24 duct of the witness, the opportunity the witness had to
25 observe the facts that he or she has testified about and

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the probability or improbability of the testimony in the light of all of the other events in the trial.

You may consider whether a witness had a motive to lie. These are all items to be taken into your consideration in determining the truthfulness and weight if any you will assign to that witness' testimony. If such considerations make it seem there was a discrepancy in the evidence, you have to consider whether this can be reconciled by fitting the two witnesses' testimony together. If that is not possible, you will have to determine which of the two conflicting versions you will accept, if any.

Now, if a witness is shown to have knowingly testified falsely concerning any material matter in a trial, you have a right to distrust such witness' testimony in other things, and you may reject all of the testimony of that witness or you may give it or parts of it such credence as you think it deserves.

The rules of evidence ordinarily don't allow witnesses to testify as to their opinions on conclusions and an exception to this rule exists for those who are referred to as expert witnesses, witnesses who by education and experience become experts in some art or skill or profession or calling such as the narcotics chemist, or so-called forensic chemist that testified before you and

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2 witnesses such as those expert witnesses may state their
3 opinions as to relevant and material matters in which they
4 professed to be expert and they may give their reasons for
5 their opinions and they may tell you about their educa-
6 tion and their experiences and you should consider such
7 expert opinion which was received in evidence in this case
8 and give it such weight as you may think it deserves. If
9 you should decide that the opinion of an expert witness is
10 not based upon sufficient education and experience, or
11 if you should conclude that the reasons given in support
12 of the opinion are not sound, or if you feel that it's out-
13 weighed by other evidence, you may disregard the expert
14 opinion entirely. Expert witnesses are no different than
15 other witnesses in that you the jury are at liberty to
16 accept or reject all or any part of their testimony, be-
17 cause you the jury are the sole judges of the facts.

18 Now you heard the testimony of several witnesses
19 through the aid of interpreters or translators and the
20 interpreters as you saw here are required to take an oath
21 that they will make a true translation of the testimony of
22 the witness and a true translation of the questions put to
23 the witness, and it's only with the aid of these trans-
24 lators that an English-speaking court and jury can have
25 the benefit of the testimony of persons having relevant

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2 information that ~~do~~ not speak the English language.

3 There has been evidence that the witness Yuin
4 speaks, reads, writes some English. Indeed, you heard
5 him on occasion respond in English or answer a particular
6 question even before the interpreter had an opportunity
7 to translate it for him.

8 Now, a witness may testify with the assistance
9 of a translator even though he is familiar with some of
10 the English language. Under those circumstances a witness
11 may find it easier. He may find it's easier to communi-
12 cate in his native language. He may find it's less likely
13 he will make a mistake or tell a falsehood and he may feel
14 more comfortable with the interpreter and under those con-
15 ditions, he has a right to request and receive an inter-
16 preter.

17 If a witness were to pretend or feign ignorance
18 of the English language, you may consider it in the same
19 manner as you would a false statement of a witness in
20 determining whether or not to believe his testimony. How-
21 ever, merely because a witness reads, speaks, writes some
22 English does not mean he could effectively respond to all
23 the complicated questions of the attorneys or make himself
24 fully understood by you jurors in the English language
25 and, if he could not, then he is entitled to request and

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2 have an interpreter and of course I remind you, a witness
3 is no less deserving of your belief merely because he or
4 she testifies in a foreign language with the aid of an
5 interpreter.

6 Now, a word about the witness Yui Kwei Sang,
7 also referred to as George Yui and Ting Yee Fong, who
8 were called by the government as witnesses at the trial.
9 By their own testimony, Yui and Ting Yee Fong were
10 accomplices in the crimes charged against the defendants
11 on trial and in the prosecution of crime, the government
12 is frequently called upon to use accomplices as witnesses.
13 Often it has no choice because the government must rely on
14 such witnesses as to transactions as there may be and it's
15 not frequent that people of impeccable reputation are wit-
16 nesses to and participants in criminal endeavors. The
17 government frequently must use such testimony otherwise
18 it would be difficult or impossible to detect or prosecute
19 wrong-doers. There is no requirement in the federal court
20 that the testimony of accomplices be corroborated. The
21 conviction may rest upon the uncorroborated testimony of
22 an accomplice if you believe it and find it credible.

23 The fact a witness may be an accomplice should be
24 considered by you as bearing upon his or her credibility.
25 However, it doesn't follow that because a person has

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2 acknowledged participation in a crime as charged against
3 the defendants or other crimes, he is not capable of giving
4 a truthful version of what is testified to. Their testi-
5 mony, however, should be viewed with great caution, scru-
6 tinized carefully. Was the testimony of either of them
7 inspired by any motive of reward or self-interest or hos-
8 tility to the defendants so that any such witness gave
9 false or slanted testimony against them? If you find it
10 was, you ought to unhesitatingly reject. However, if after
11 cautious and careful examination of a witness' testimony
12 and considering his demeanor or behavior on the witness
13 stand, the way he answers the questions and the nature of
14 the testimony given you are satisfied that that witness
15 told the truth as to certain events, there is no reason
16 why you should not accept it as truthful and credible and
17 act on it accordingly.

18 Now, it's also permissible for the government to
19 arrange for special benefits for accomplices who become
20 cooperating individuals and this can include provisions
21 for their financial support, that of their families, in
22 obtaining new employment for them in a different place,
23 attempting to prevent their deportation to Hong Kong or
24 arranging to bring the wife to the United States from Hong
25 Kong. All of these procedures are permissible. However,

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2 there is the possibility that such benefits conferred upon
3 a self-admitted criminal might create a bias on his part
4 in favor of the government or might be an inducement to
5 testify falsely, so these matters are proper matters for
6 your consideration in weighing the testimony of Ting Yee
7 Fong and George Yui, along with all of the other relevant
8 evidence in the case.

9 Now, with reference to the testimony of agents
10 Mason and Morphis of the United States Customs Service,
11 you will recall they testified regarding certain state-
12 ments that they said were made by the defendant Cheung
13 Kin Ping while he was in custody of Customs agents on the
14 night of April 5th and the early morning of April 6, 1972.
15 Unless these statements were voluntarily made by Cheung
16 Kin Ping and unless such portions of them as may have been
17 made in the Chinese language or made as a result of inter-
18 pretation of questions of the Customs agent in English or
19 in the Chinese language were accurately translated, your
20 common sense will tell you such statements have no evi-
21 dentiary value. You shall consider all of the surrounding
22 circumstances bearing upon the giving of the statements
23 and give them such weight as you the jury feel they de-
24 serve under all the circumstances. A statement is
25 voluntarily made if it's made intentionally, a matter of

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2 the maker's own free will and not because of misunderstand-
3 ing or coercion.

4 Among the circumstances you may consider and
5 without in any way intending to limit the totality of the
6 circumstances, you may give due regard to the age, educa-
7 tion, training, physical and mental condition of the
8 defendant, his treatment while in custody or under interro-
9 gation as shown by the evidence in the case and whether
10 before the statement was made, the defendant knew and had
11 been told and understood that he was not obligated or
12 required to make any statement and that any statement he
13 might make could be used against him in court and that he
14 was entitled to the assistance of an attorney before
15 making any statement and if he was without money or means,
16 a lawyer would be appointed.

17 You may consider whether the defendant understood
18 he had these rights and knowingly waived them in making
19 the statements the government claims he made. If you find
20 the defendant made statements that he claims were made
21 without having an attorney present after he had requested
22 that he be permitted to be advised by an attorney, that
23 fact alone is sufficient to show that any statement there-
24 after made was not made knowingly, voluntarily and
25 intentionally after waiving his right to counsel.

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2 Any confession or admission or statement made
3 on April 5th or 6, 1972 by the defendant Cheung Kin Ping
4 may be considered only against him. You can consider it
5 only in connection with his case and it has no bearing
6 whatsoever on the case against the other defendant Lai
7 Mong Wah. Voluntary admissions of a defendant if you
8 find they were such, are among the most effectual proofs
9 in law. They constitute the strongest sort of evidence
10 against a party making the admission or confession of
11 the facts stated therein and you are entitled to give
12 great weight to a defendant's admissions if the admissions
13 were made in a conversation with a witness whose version
14 of the conversation you believe and if they were made
15 voluntarily after being fully advised of his rights and
16 after waiving his right to have an attorney present.

17 There has also been testimony that while the
18 defendant Cheung Kin Ping was in the custody of the
19 Customs agents in Miami on April 5th or 6th, he placed
20 telephone calls to two numbers in New York City that have
21 been identified as telephone numbers of Lai Mong Wah and
22 the alleged co-conspirator, George Yuin. As I told you
23 at the time, you may consider this evidence only for two
24 limited purposes. First, you may consider it in assessing
25 the credibility or truthfulness of the witness Yuin. That

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2 is you can consider whether it in any way corroborates Yui's
3 testimony regarding Yui and Cheung Kin Ping's participation
4 in these events, the fact that such a phone call to that
5 particular phone number in New York was made by Cheung Kin
6 Ping at that time, if in fact it was made.

7 Secondly, you may consider this as some evidence
8 of the existence of the conspiracy charged, a matter I will
9 instruct you further on in a few moments.

10 However, in deciding whether Lai Mong Wah was
11 a knowing and willful member of the conspiracy charged,
12 you cannot rely on this particular testimony concerning a
13 telephone call to her home telephone number on that date
14 by Cheung Kin Ping.

15 Now, there is no duty on the government to call
16 witnesses or produce evidence which is equally available
17 to both sides. Specifically, the government had no duty
18 to call Keung, the Florida restaurant owner who was said
19 to have acted as an interpreter and the bank records of
20 George Yui to the extent they exist are equally available
21 by subpoena to both sides. Any party to the case can go
22 to the bank and obtain copies in that fashion by issuing
23 a subpoena which is signed by the clerk of this court,
24 although as I mentioned to you earlier, no defendant need
25 prove anything and the burden of proof is always on the

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2 government and the defendant is not required to bring in
3 any evidence, but the point I wish to make at this time,
4 you are to decide the case on what was brought before you
5 and the weight of evidence and you may consider the absence
6 of that evidence but you may not speculate as to what some
7 witness who was not called may have testified to, or what
8 some document which was not brought in may have shown if the
9 document or the witness is equally available to both sides
10 and no inference adverse to the government results from its
11 failure to call such equally available witnesses or bring
12 in equally available documents, nor need the government
13 bring in witnesses whose testimony would have been merely
14 cumulative. In the latter category, you may consider that
15 Cascavil the other Customs agent in Florida, would have
16 been merely cumulative of the testimony of agents Mason,
17 Csukas or Morphis and under those circumstances, there was
18 no need to bring in agent Cascavilla, if you find that to
19 be so.

20 Now, there has been testimony from the government
21 witness Ting Yee Fong that following his arrest with the
22 defendants Cheung Kin Ping and Sammy Cho, the defendant
23 Cheung Kin Ping asked Ting Yee Fong to fabricate a false
24 story as to Cheung Kin Ping's role in the importation of the
25 heroin seized in Miami at the time of their arrest. The

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2 government contends, and of course it's for you to deter-
3 mine, that there has been testimony and documentary evidence
4 before you tending to show that the story that Cheung Kin
5 Ping wished Ting Yee Fong to tell and which in fact Ting
6 Yee Fong did in fact tell was false. If you find beyond
7 a reasonable doubt that Cheung Kin Ping told Ting Yee
8 Fong to tell this story and you find this story was false
9 and that at the time Cheung Kin Ping told Ting Yee Fong to
10 tell it that it was false and he knew it, then you may con-
11 sider such facts as circumstantial evidence of consciousness
12 of guilty, and therefore, as evidence of guilt in and of
13 itself.

14 Ordinarily it's reasonable to infer that an inno-
15 cent person does not usually find it necessary to invent
16 or fabricate an explanation or a statement tending to
17 establish his innocence. Whether or not evidence as to
18 such an explanation or statement points to a consciousness
19 of guilt and the significance if any to be attached to such
20 evidence, are matters, like all fact matters, solely for
21 your own consideration.

22 In considering it, you may take into consideration
23 the circumstances under which the time and place, when and
24 where that statement or explanation was made or given, if
25 it was.

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2 Here this particular evidence does not apply to
3 the case of the defendant Lai Mong Wah and testimony by Ting
4 Yee Fong concerning any request by Cheung Kin Ping that
5 Ting Yee Fong tell a false exculpatory story, may not be
6 considered by you in determining whether Lai Mong Wah com-
7 mitted any of the acts alleged in the indictment.

8 Defendant Cheung Kin Ping did not take the stand
9 and testify in this case and this is his absolute right
10 guaranteed by the United States constitution. The law
11 does not compel a defendant in a criminal case to take the
12 stand and testify and no presumption of guilt may be raised
13 and no inference of any kind may be drawn from his failure
14 to testify. As I stated before, the law never imposes upon
15 a defendant in a criminal case the burden or duty of calling
16 any witnesses or producing any evidence and the fact he did
17 not take the stand is not even a question for your discussion.
18 Put it absolutely out of your minds because it's a very
19 valuable right guaranteed by the constitution.

20 You will recall there were employees at banks who
21 testified. There was a man from the American Express Com-
22 pany who appeared and these witnesses came in in response
23 to subpoenas duces tecums served on their employers. These
24 are subpoenas issued to compel somebody to bring a document
25 into court, not to gain testimony as such but to bring in a

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document and these witnesses who appeared here did so only for the limited purpose of authenticating documents from the banks or from the records of the American Express Company and to testify that the documents were kept in the regular course of business and I will tell you this testimony is necessary under the rules governing the admissibility of evidence. It's not contended that the persons who appeared here on behalf of the banks or the American Express Company had anything to do with the financial transactions in this case. It's not contended that they had first-hand knowledge of the transactions illustrated by the documents they produced. Rather, their testimony is limited to the fact that the documents here in evidence are from the regularly kept business records of their respective companies and if you find these documents are maintained in the regular course of business, it's the regular practice of these businesses to maintain such records, you may conclude that the documents in evidence accurately reflect the banking credit transactions and the airline ticket purchases and other matters in issue therein shown.

Also, a bank officer may testify as an expert as to the regular methods of doing the banking business internally, concerning the clearing of checks and the

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2 practices and customs relating to bank stamps on the back
3 of checks and such matters as that and there you treat such
4 testimony as any other testimony or expert testimony and
5 you give it such weight as you deem it entitled to.

6 A few words about the crimes charged: Under
7 federal law, there are no crimes except to the extent that
8 they are defined or created by statutes passed by Congress
9 and signed by the President and from time to time Congress
10 changes provisions in the federal criminal law. Because of
11 the fact the events that are the subject of this case are
12 alleged to have occurred in the period January 1, 1970
13 through April 30, 1972, you will be concerned with two
14 different federal narcotics laws, since during that time
15 a change in the law took effect. Now, it's not necessary
16 that you memorize or know the words or the section numbers
17 of any of these laws which I am going to read to you in a
18 moment, but I ask you to pay close attention to the ele-
19 ments of these laws as I will describe them to you shortly.
20 One law was in effect for some years ending on May 1, 1971
21 and I will refer to this as the old law.

22 The other law began to take effect on May 1, 1971
23 and continues in force today and I will refer to this law
24 as the new law.

25 Count 1 of the indictment charges that a conspiracy

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2 existed during the period from January 1, 1970 until April
3 30, 1972 and that Cheung Kin Ping and Lai Mong Wah were
4 members of that conspiracy. The indictment charges that
5 the conspiracy had as its objects and purposes, violation of
6 the old law in effect until May 1, 1971 and continued after
7 May 1, 1971 with the object and purpose to violate the new
8 law in effect after May 1, 1971.

9 The old law which was in effect until May 1, 1971
10 appeared in Sections 173 and 184 of Title 21 of the United
11 States Code. Section 174, and I mentioned you don't have
12 to remember these numbers, but you must understand what the
13 law forbids.

14 Section 174 provided in part: Whoever fraudu-
15 lently or knowingly imports or brings any narcotic drug
16 into the United States contrary to law, or receives, con-
17 ceals, buys, sells or in any manner facilitates the trans-
18 portation, concealment or sale of any such narcotic drug
19 after being imported or brought in, knowing the same to
20 be imported or brought into the United States contrary
21 to law, or conspires to commit any of such acts in viola-
22 tion of the laws of the United States, shall commit a
23 crime.

24 Section 173 of Title 21 of the United States
25 Code provides in part: It is unlawful to import or bring

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2 any narcotic drug into the United States except such amounts
3 as the Commissioner of Narcotics finds to be necessary to
4 provide for medical and legitimate usage.

5 Now, the new law which came into effect on May 1,
6 1971 as part of a comprehensive drug abuse prevention and
7 control act of 1970, is contained in Sections 812, 841A1
8 and 841B1A of Title 21 of the United States Code.

9 The new law forbids the distribution or the
10 possession of with intent to distribute of certain kinds
11 of narcotic drugs as listed in schedules of controlled
12 substances, and I instruct you that heroin is among the
13 narcotic drugs listed in Schedule 1.

14 I ask you to keep this history of changes in the
15 narcotics laws in mind as I discuss with you the various
16 offenses charged in this indictment.

17 As I previously mentioned, Count 1 charges that
18 these defendants and others conspired to violate the nar-
19 cotics laws. I will refer to Count 1 in my discussion as
20 the conspiracy count. The remaining counts charge viola-
21 tions of the narcotics laws and other statutes, and these
22 for convenience, I call the substantive counts, and I ask
23 you to keep clear in your mind each separate offense be-
24 cause each has different elements. Count 1, the conspiracy
25 count, charges that one object of the alleged conspiracy

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was the violation of the old law, which I read to you before, and that after May 1, 1971, the conspiracy had as its object to violate the new law that forbids the distribution or possession with intent to distribute Schedule 1 controlled substances, that is, heroin.

In general terms, you could say that both before and after May 1, 1971, the basic wrong alleged in Count 1 is that the defendants conspired to engage in the unauthorized sale or transfer of heroin: However, there are distinct and different elements that must be proved with respect to the different statutes and it's important that you keep them in mind.

In your deliberations with respect to Count 1, it will be essential for you to make two separate determinations. First will be whether the government has proved the defendant whose case you are then considering, guilty beyond a reasonable doubt of the crime of conspiracy as charged therein prior to May 1, 1971, of the old law. Then turn your attention as to whether any such crime has been proved beyond a reasonable doubt as to that defendant's case you are then considering as to the period after May 1, 1971.

In a sense, there will be two separate decisions as to each defendant which you will be asked to make with

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2 respect to Count 1. If any defendant is convicted on
3 Count 1, you will then be asked by the clerk separately to
4 state whether your verdict is his or her violation under
5 Count 1 occurred before May 1, 1971 or after May 1, 1971
6 or both before and after, and that request will be made.
7 If such a verdict is announced, the request will be made
8 immediately thereafter.

9 The next thing I will do is to read part of
10 Count 1. It occurs to me because these instructions are
11 somewhat lengthy and I have been observing that all of you
12 have been paying very close attention, it might be well if
13 we took a brief recess. You have received about half of
14 my instructions so it would be wrong to talk about the
15 case during the recess or to talk about the instructions,
16 some of which will become more clear as we go along and I
17 urge you again as I have said already to you, keep an open
18 mind, so we will take a ten-minute recess and if you with-
19 draw to the jury room, we will take about a ten-minute
20 recess.

21 (Recess.)

22 (Jury leaves courtroom.)

23 MR. SLEPIAN: In relation to what the court has
24 already charged, I do have a comment and maybe the court
25 can accede to it.

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2 THE COURT: I usually don't stop in the middle
3 and I take all exceptions in the end. What is on your
4 mind?

5 MR. SLEPIAN: You discussed the regular course of
6 business and in doing so discussed the banking records. I
7 wish the court to include the payroll --

8 THE COURT: Certainly, I will do that

9 MR. SLEPIAN: -- of the defendant's employer.

10 THE COURT: I assumed there was no dispute she
11 was working there during those dates, that is why I ex-
12 cluded it. But I will include it.

13 MR. ENGEL: Just to be equitable about that, you
14 can include the hotel records.

15 (Recess.)

16 (In open court - jury present.)

17 THE COURT: Members of the jury, before we had
18 our brief recess, I spoke to you about documents kept in
19 the regular course of business which were authenticated
20 and offered in evidence by testimony of employees at
21 banks and the American Express Company. During the recess,
22 the attorneys were kind enough to remind me that I should
23 have broadened my statement because there are other docu-
24 ments which don't come from banks or the American Express
25 Company to which the same rule applies. Those include the

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payroll records of the clothing factory with respect to which the witness testified and the records of the Woodner Hotel with respect to which a witness testified. Those documents also you may regard as being maintained in the regular course of business and the regular practice of these businesses to maintain such records and if you so find, you may conclude that those documents accurately reflect the transactions set forth thereon.

Now, at this point I will read part of Count 1 to you: The grand jury charges (1), on or about the 1st day of January, 1970 and continuously thereafter up to and including the 30th day of April, 1972, in the Southern District of New York and elsewhere, Larry Lombardi, Sammy Cho, also known as Cho Kwok Chung, Cheung Kin Ping, also known as Siao Moo Bee, Lai Mong Wah, also known as Wah Je, also known as Gloria, also known as Big Sister, Chang Yu Ching the defendants, and others to the grand jury known and unknown including Liu Yeuh Han, also known as Dr. John Liu, Yui Kwei Sang also known as George Yui, Ting Yee Fong, also known as Doo Moo Bee, Ka Chung Fuk, John Doe also known as Ah Dee, John Doe also known as Ah Sung, John Doe also known as Po Leung. Named herein as co-conspirators but not as defendants, unlawfully, willfully and knowingly combined, conspired, confederated and agreed together and

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2 with each other to violate prior to May 1, 1971, Sections
3 173 and 174 of Title 21 United States Code and on and after
4 May 1, 1971, to violate Sections 812, 841A1, 841B1A, 951A1A
5 and 952 of Title 210, United States Code.

6 (2) As part of said conspiracy that prior to
7 May 1, 1971, the said defendants and co-conspirators un-
8 lawfully, willfully and knowingly and fraudulently would
9 import and bring into the United States, large amounts of
10 narcotic drugs from and through Hong Kong, a British Crown
11 Colony and other countries to the grand jury unknown in
12 violation of Sections 173 and 174 Title 21 United States
13 Code.

14 (3) It was further a part of said conspiracy
15 that prior to May 1, 1971, the said defendants and co-
16 conspirators unlawfully, willfully and knowingly would re-
17 ceive, conceal, buy, sell and facilitate the transportation,
18 concealment and sale of a quantity of narcotic drugs, the
19 exact amount and nature thereof being to the grand jury
20 unknown after the said narcotic drugs had been imported
21 and brought into the United States contrary to law, knowing
22 that the said narcotic drugs had been imported and brought
23 into the United States contrary to law in violation of
24 Sections 173 and 174 of Title 21 United States Code.

25 (4) It was further a part of said conspiracy on

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2 and after May 1, 1971 the said defendants and co-conspirators
3 unlawfully, willfully and knowingly would import into the
4 United States from a place outside thereof, to wit, Hong
5 Kong, the British Crown Colony, Schedule 1 narcotic drug
6 controlled substances, the exact amount thereof being to
7 the grand jury unknown in violation of Sections 812, 951A1
8 and 952 of Title 21, United States Code.

9 (5) It was further a part of said conspiracy that
10 on and after May 1, 1971 the said defendants and co-
11 conspirators unlawfully, willfully and knowingly would dis-
12 tribute and possess with intent to distribute Schedule 1
13 narcotic drug controlled substances, the exact amount there-
14 of being to the grand jury unknown, in violation of Sections
15 812, 841A1 and 841B1A of Title 21, United States Code.

16 Overt acts. In pursuance of said conspiracy and
17 to effect the objects thereof, the following overt acts
18 were committed in the Southern District of New York and
19 elsewhere and thereafter Count 1, Count 2 lists certain
20 alleged overt acts and I will read those later on.

21 In order to convict either of these defendants
22 on Count 1, the following three essential elements must be
23 established to your satisfaction beyond a reasonable doubt
24 as to that defendant whose case you are then considering.
25 Now, listen carefully to these elements because I am now

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2 going to give you the elements of Count 1:

3 First, that the conspiracy charged in Count 1
4 did in fact exist. That is, that two or more persons agreed
5 to violate the federal narcotics laws at some point at or
6 about the time period alleged in the indictment, which is
7 mentioned as being from January 1, 1970 to April 30, 1972.
8 That is the first element.

9 Second, that the particular defendant whose case
10 you are then considering knowingly and willfully associated
11 himself or herself with the conspiracy and did so with the
12 required criminal knowledge and intent, that is, became a
13 member of it.

14 Finally, the third element is, that one of the
15 conspirators committed, in the Southern District of New
16 York, at least one of the overt acts set forth in the
17 indictment at or about the time and place alleged.

18 Now, I will discuss each of these elements one
19 at a time. The first element of Count 1 you must determine
20 is whether the conspiracy charged in this indictment did in
21 fact exist. What is a conspiracy? For our purposes in
22 this case, a conspiracy is simply a combination or an
23 agreement or an understanding reached by two or more members
24 to act together and in concert to commit a crime. Con-
25 spiracy is sometimes referred to as a partnership for

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2 criminal purposes in which each member of the conspiracy
3 becomes the agent for and agents for every other member to
4 achieve a common criminal result. The gist of the crime of
5 conspiracy is the unlawful combination or agreement of
6 two or more people to violate the law together and the
7 crime of conspiracy is entirely separate and distinct and
8 different from the violation of the law or laws which may
9 have been the object or purpose of the conspiracy.

10 Thus, if a conspiracy exists, even if it should
11 fail in its purpose, the partners in it may still be con-
12 victed. Also, in regard to the charge of conspiracy, Count
13 1, the government is not required to prove an actual vio-
14 lation of the narcotics law which took place, but need only
15 prove that the conspiracy came into existence for the pur-
16 pose and at or about the times alleged and that at least
17 one overt act was committed by a conspirator in furtherance
18 of its purposes.

19 To establish that a conspiracy existed, the govern-
20 ment is not required to show that two or more people sat
21 around a table and entered into a solemn pact or agreement
22 orally or in writing stating that they formed a conspiracy
23 to violate the law setting forth the details of the plans,
24 the means by which the unlawful project is to be carried
25 out or setting forth the part to be played by each

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2 conspirator. Indeed, it would be extraordinary if there
3 were such a formal document or specific oral agreement.
4 Your common sense will tell you, when men and women in
5 fact undertake to enter into a criminal conspiracy, much
6 is left to the unexpressed understanding. Conspirators
7 usually don't reduce their agreements to writing or
8 acknowledge them before a notary public nor do they pub-
9 licly broadcast or advertise their plans.

10 From its nature, a conspiracy is almost invari-
11 ably secret in its origin and execution, but it's sufficient
12 to prove the existence of a conspiracy if two or more per-
13 sons in any manner through any contrivance impliedly or
14 tacitly came to a common understanding to violate the law
15 together. Express language or specific words are not re-
16 quired to indicate assent to or attachment to a conspiracy,
17 nor is it required that you should find that all the co-
18 conspirators alleged in the indictment joined in the
19 conspiracy in order to find that the conspiracy existed as
20 charged. You need only find that one of the defendants
21 entered into an unlawful agreement with one or more other
22 persons in order to find that a conspiracy existed.

23 In determining whether there has been an unlaw-
24 ful agreement, you may judge acts and conduct of the
25 alleged conspirators which are done to carry out an

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2 apparent criminal purpose. The adage, you all heard it,
3 actions speak louder than words is applicable. Usually
4 the only evidence available is that of disconnected acts
5 which when taken together with each other, may show a
6 conspiracy to secure a particular result just as satis-
7 factorily and conclusively as more direct proof. The
8 offense is completely whether the unlawful agreement is
9 made and any single overt act to effect the object of the
10 conspiracy is thereafter committed by at least one co-
11 conspirator. The proof concerning the accomplishments of
12 the objects of the conspiracy may be the most persuasive
13 evidence of the existence of the conspiracy itself. Success
14 of the venture, if you believe it was successful, may be
15 the best proof of the existence of the agreement.

16 In determining whether the conspiracy charged
17 in this indictment actually existed, you may consider the
18 evidence of the acts and conduct of the alleged con-
19 spirators as a whole and the reasonable inferences or
20 conclusions to be drawn from such evidence. If upon con-
21 sideration of the evidence you find beyond a reasonable
22 doubt that the minds of at least two of the alleged co-
23 conspirators met in a conspiratorial agreement to work
24 together in furtherance of the unlawful scheme charged in
25 this indictment, that is, the possession, sale, distribution

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2 of heroin, then that is proof that the conspiracy in fact
3 existed and the first element would be satisfied.

4 The period of time charged as I mentioned earlier
5 is from on or about January 1, 1970 to April 30, 1972. It's
6 not necessary for the government to prove the conspiracy
7 started and ended on those precise, specific days. It's
8 sufficient if you find that the conspiracy was formed, that
9 it existed for some substantial time within the period set
10 forth in the indictment and that at least one overt act
11 was committed during that period and in this district.

12 Now, I instruct you that a conspiracy is deemed to
13 cease to exist when its existence has been discovered by
14 the authorities, and you may find that notwithstanding the
15 fact that the indictment refers to the termination date of
16 April 30th, that in fact the conspiracy if there was one
17 ended on April 5th or 6th when the 22 pounds of heroin came
18 into the possession of the Customs officials at Miami,
19 Florida, when Cheung Kin Ping, Sammy Cho and Ting Yee
20 Fong were arrested.

21 In this connection, I wish also to instruct you
22 specifically that you may not consider any narcotics trans-
23 actions engaged in by George Yuin prior to January 1, 1970
24 as having any bearing whatsoever on the conspiracy charged
25 in this case. That evidence or testimony by Yuin as to

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2 what he was doing in 1968, 1969 was permitted solely for
3 the limited purposes of showing Yuin's prior familiarity
4 with the narcotics business or the dealing in heroin, and
5 also is a factor bearing upon his credibility.

6 The government does not contend, nor is there any
7 evidence or suggestion that either of these defendants were
8 engaged in any way in any narcotics transactions prior to
9 January 1, 1970.

10 Now, the second element in Count 1 which must be
11 proved beyond a reasonable doubt is individual membership
12 in the conspiracy by the person whose case you are then
13 considering.

14 If you do conclude that a conspiracy as charged
15 existed, you must next determine whether either or both
16 defendants on trial before you was a member. That is,
17 whether he or she participated intentionally in the con-
18 spiracy with knowledge of its unlawful purposes and in
19 furtherance of its unlawful objectives. To find that a
20 defendant was a member of a conspiracy, you must find that
21 he or she knowingly and intentionally participated therein.
22 Thus, mere knowledge by a defendant of the existence of a
23 conspiracy or of any illegal act on the part of an alleged
24 conspirator or mere association with one or more con-
25 spirators is not sufficient to establish his or her

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2 membership in the conspiracy. The government must estab-
3 lish beyond a reasonable doubt that the defendant whose
4 case you are considering was aware of its basic purposes
5 and objects and entered into the conspiracy with a specific
6 criminal intent, that is, with a purpose to violate the law.

7 So, if the defendant whose case you are consider-
8 ing, were understanding of the unlawful character of the
9 conspiracy, intentionally engages in actions or advises or
10 assists for the purpose of furthering the illegal under-
11 taking, he or she thereby becomes a knowing and willful
12 participant and a conspirator, and the second element of
13 Count 1 may be found to have been satisfied.

14 However, I want to caution you again, mere
15 association with one or more of the alleged co-conspirators
16 does not make one a member of the conspiracy nor in knowledge
17 of its existence without participation sufficient to make
18 one a conspirator. To find that a particular defendant was
19 a member of the conspiracy, you must first find that he or
20 she acted knowingly and willfully and with specific knowledge
21 and criminal intent, and I will discuss the meanings of these
22 words with you at greater length in a few moments.

23 You will recall during this trial I accepted
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2 some evidence subject to connection. Because a case must
3 of necessity be presented to you in a piecemeal fashion,
4 it's proper for evidence to be received in that way and
5 the court later may rule whether the evidence may be con-
6 sidered at all and if so, for what purpose. That evidence
7 which I received subject to connection may now be con-
8 sidered by you in this case for whatever weight and value
9 and significance you the jury find that it possesses, bear-
10 ing in mind you are the sole judges of the facts and you
11 decide to resolve all factual issues which I have said to
12 you a number of times.

13 You will notice that most of the objections made
14 by counsel for any of the parties as to which I ruled that
15 certain evidence was taken subject to connection with
16 objections stated by attorneys for defendants who were
17 not claimed to be present at the time of the conversations
18 being testified to or the incident being described.

19 As to a defendant who was not present at the time
20 of a conversation in furtherance of the conspiracy or not
21 present at the time of an incident which took place in
22 connection with achieving the objects of the conspiracy,
23 you cannot consider such testimony or conversation or
24 event as bearing upon the membership of that particular
25 absent defendant in the conspiracy, because whether he or

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1 she joined the conspiracy knowingly and willfully and with
2 knowledge of at least some of its unlawful objectives must
3 be determined as to him or her solely on the basis of what
4 he or she said or did, or what took place in his or her
5 presence and not on the basis of what somebody else did
6 when he or she was not present and not participating; but
7 such testimony may be relied upon as to any defendant who
8 was present and participated and may apply to both defen-
9 dants insofar as concerns the issue of whether or not the
10 conspiracy existed as charged.
11

12 Now, the third element of the conspiracy charge
13 is that it must appear to your satisfaction beyond a
14 reasonable doubt, that at least one of the conspirators
15 committed an overt act in the Southern District of New
16 York as listed in the indictment.

17 (Continued on next page.)
18
19
20
21
22
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I will read these in a moment, and I ask you to pay attention to them, and you will note that some of the overt acts listed did not take place in this district. If an act is listed as taking place partly in this district and partly out of this district, you may treat it as sufficient.

In considering the elements of any count, if you find the first element was not proven beyond a reasonable doubt, you will cease your deliberations as to that particular defendant concerning whom you have reached that conclusion, and it is your duty to acquit that defendant on that count and you need not consider as to that defendant the second and third element of the count or crime.

You will then consider count 1 as to the other defendant, and determine whether all three elements have been proved beyond a reasonable doubt. The Government must prove all three elements. Failure to prove any one of the three will require a verdict of acquittal with regard to the defendant with respect to whom there was such a failure of proof.

I am now going to read the overt acts:

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were

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2 committed in the Southern District of New York and
3 elsewhere:

4 1. In the summer of 1970 defendant Chang Yu
5 Ching showed defendant Lai Mong Wah a sample of heroin
6 in a Mah Jongg Club located at Number 10, The Bowery,
7 New York, New York.

8 2. In the winter of 1970-71 a sailor entered
9 the Golden Star Bar, 51 East Broadway, New York, New York
10 and spoke to defendant Lai Mong Wah.

11 3. In the winter of 1970-71 defendant Lai
12 Mong Wah received approximately three pounds of heroin off
13 a ship docked at Staten Island, New York.

14 4. In or about March 1971, co-conspirators
15 Yui Kwei Sang and Liu Yueh Han met in Room 1104 of the
16 Woodner Hotel, 3636 16th Street N.W., Washington, D.C.

17 5. In or about March 1971, co-conspirator
18 Liu Yeh Han paid co-conspirator Yui Kwei Sang \$15,000
19 in the vicinity of the Peking Restaurant, 5522
20 Connecticut Avenue N.W., Washington, D.C.

21 6. In or about March 1971, defendant Lai
22 Mong Wah sent approximately \$10,000 from New York, New
23 York to defendant Chang Yu Ching in Hong Kong, British
24 Crown Colony.

7. In or about September 1971, a sailor

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2 delivered two coffee tables, each containing approxi-
3 mately two and a half pounds of heroin to an apartment
4 rented by defendant Lai Mong Wah at 133 East 4th Street,
5 New York, New York.

6 8. In or about September 1971, defendant
7 Cheung Kin Ping and co-conspirator John Doe, a/k/a
8 "Po Leung," received approximately eight ounces of
9 heroin at 80 First Avenue, New York, New York.

10 9. On or about September 29, 1971, co-
11 conspirator Liu Yueh Han gave another person \$2,500 in
12 the Peking Restaurant, 5522 Connecticut Avenue, Washington,
13 D.C.

14 10. In or about September 1971, defendant
15 Sammy Cho distributed approximately 15 pounds of heroin
16 at 274 Mott Street, New York, New York.

17 11. In or about September 1971, defendant
18 Larry Lombardi, at 95 East Broadway, New York, New York,
19 received approximately two kilograms of heroin and tested
20 it by boiling a sample of it, contained in a test tube,
21 in mineral oil.

22 12. On several occasions in or about
23 September 1971, defendant Larry Lombardi received quantities
24 of heroin contained in five-ounce bags totaling
approximately 15 pounds of heroin.

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2 13. In or about October 1971, defendant
3 Sammy Cho transported approximately 20 pounds of heroin
4 in a red Studebaker from 274 Motu Street to 133
5 East 4th Street, New York, New York.

6 14. On several occasions in or about
7 October 1971, defendant Larry Lombardi received quantities
8 of heroin contained in five-ounce bags, totaling
9 approximately 20 pounds of heroin.

10 15. In or about December 1971, defendant
11 Larry Lombardi received approximately one pound of heroin
12 at 95 East Broadway, New York, New York.

13 16. In or about November 1971 defendant
14 Larry Lombardi counted approximately \$30,000 at 95 East
15 Broadway, New York.

16 17. On or about December 1, 1971, defendant
17 Cheung Kin Ping flew from New York, New York to Hong
18 Kong, British Crown Colony.

19 18. In or about December 1971, defendant
20 Chang Yu Ching received approximately \$10,000 from
21 defendant Lai Mong Wah in Hong Kong, British Crown Colony.

22 19. On or about December 22, 1971,
23 defendant Lai Mong Wah negotiated approximately \$14,000 in
24 personal money orders through the Hang Seng Bank, Hong Kong,
25 British Crown Colony.

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2 20. In or about January 1972, defendant
3 Lai Mong Wah, Cheung Kin Ping and Sammy Cho met in the
4 Wing Wah Restaurant, Hong Kong, British Crown Colony.

5 21. On or about January 3, 1972, defendant
6 Sammy Cho negotiated approximately \$5,000 in personal
7 money orders through the Chase Manhattan Bank, Hong Kong,
8 British Crown Colony.

9 22. On or about January 26, 1972, defendants
10 Lai Mong Wah, Cheung Kin Ping and Sammy Cho met in the
11 Hotel Singapore, 54 Kennedy Road, Hong Kong, British
12 Crown Colony.

13 23. On or about February 12, 1972, on a
14 dock in Hong Kong, British Crown Colony, co-conspirator
15 Ting Yee Fong received approximately 22 pounds of
16 heroin in a suitcase and carried it aboard the motor
17 vessel Laomedon.

18 24. On or about March 30, 1972, co-conspirator
19 Ting Yee Fong placed a telephone call from Panama Canal
20 Zone to defendant Cheung Kin Ping in New York, New York.

21 25. On or about April 5, 1972, defendants
22 Cheung Kin Ping and Sammy Cho flew from New York, New York
23 to Miami, Florida.

24 That concludes a reading of the overt acts.

25 Now, an overt act is any step, action or

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2 conduct which is taken to achieve or further or
3 accomplish the objective of the conspiracy. The purpose
4 of requiring proof of an overt act is that parties might
5 conspire and agree to violate the law. After they
6 reach that agreement, they may change their mind; they
7 may do nothing to carry it into effect. If that happens,
8 if there was only talk, then no crime has been committed.

9 An overt act is an essential element. The
10 commission of an overt act within this district by a
11 member of the conspiracy in furtherance thereof is an
12 essential element to the crime of conspiracy. A mere
13 agreement without an overt act is not a crime, but the
14 overt act need not be a criminal act, nor need it be the
15 very crime which is the object of a conspiracy.

16 It is not necessary for the Government to
17 prove that each member of the conspiracy committed or
18 participated in any overt act or any particular act, since
19 the act of anyone done in furtherance of the conspiracy
20 becomes the act of all other members.

21 Also, the Government is not required to prove
22 each of the overt acts as alleged in the indictment.
23 It is sufficient if it proves the commission of at least
24 one of the overt acts by any co-conspirator in the
25 Southern District of New York.

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2 In order to find that the third element has
3 been satisfied, you must find beyond a reasonable doubt
4 that one of the overt acts was committed within the
5 Southern District of New York. So long as any single
6 overt act was committed in the Southern District of New
7 York, it is not important that other actions may have
8 taken place in Staten Island, in Washington, D.C., in
9 Hong Kong, Miami, or elsewhere, and for our purposes
10 here, you should know that Manhattan, New York County,
11 is one of the counties that comprise the Southern
12 District of New York, and also that Staten Island is not
13 in the Southern District of New York -- it is in the
14 Eastern District of New York.

15 It would be possible to commit an overt act
16 by leaving from Manhattan to go to Staten Island with the
17 intention of accomplishing an overt act in Staten Island
18 in furtherance of the conspiracy, as I think is charged in
19 one of those acts I just read to you.

20 So much for count 1 or the conspiracy count.

21 We are now turning to count 2 and I will
22 now read that.

23 The grand jury further charges:

24 In or about January 1971, in the Southern
25 District of New York, Lai Mong Wah, a/k/a Wah Je,

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2 a/k/a Gloria, a/k/a Big Sister, and Chang Yu Ching, the
3 defendants, unlawfully, wilfully, knowingly and fraudulently
4 did import and bring into the United States contrary to
5 law a narcotic drug, to wit, approximately three pounds
6 of heroin, in that the importation and bringing of any
7 narcotic drug into the United States, except such amounts
8 of crude opium and coca leaves as the Director of the
9 Bureau of Narcotics and Dangerous Drugs finds to be neces-
10 sary to provide for medical and legitimate uses only,
11 is prohibited.

12 Count 2 charges the defendant Lai Mong Wah
13 with having violated the old law, that is, the federal
14 narcotics law as it was in effect prior to May 1, 1972,
15 and earlier in my instructions to you you will recall
16 that I read the applicable portions of the statutes that
17 are the old law. The defendant Cheung Kin Ping is not
18 mentioned in count 2 and it has no applicability whatsoever
19 to him.

20 To obtain a guilty verdict against Lai Mong
21 Wah under count 2, the Government must prove each of the
22 following elements beyond a reasonable doubt. These three
23 elements are a different three elements than we had in the
24 conspiracy count.

25 First, the Government must prove that on or

1 9 rkmch

2 about January 1971 in the Southern District of New York
3 Lai Mong Wah imported or brought a narcotic drug into
4 the United States;

5 Second, that she did so unlawfully, knowingly
6 and wilfully;

7 Third, that the substance involved was in fact
8 heroin.

9 With regard to the first element, I instruct
10 you that the word "import" is to be understood by you
11 as having its ordinary meaning, that is, to bring into
12 the country, or cause to be brought into the country.

13 The second element requires you to determine
14 whether the defendant acted unlawfully, knowingly and
15 wilfully, and these are important words. You have
16 heard me use the words "knowingly and wilfully" in
17 connection with my instructions to you regarding the
18 conspiracy count, and I will now discuss with you the
19 meaning of those words. They occur throughout my
20 instruction and I ask that you treat my comments concerning
21 the meaning of these words and bear them in mind in your
22 deliberations as to each count.

23 The question is, what do these words mean?
24 First, let me instruct you as to what they do not mean.
25 They do not mean that the Government must show that a

1 10 rkmch

2 defendant knew he was breaking a particular law before he
3 can be convicted of a crime. They do not mean that the
4 Government has to show that the defendant intended to
5 profit at the expense of any other person. Nor do they
6 have anything to do with the defendant's personal or
7 private reasons for violating a statute. For if, after
8 considering all the evidence in accordance with my instructions
9 to you, you come to the conclusion that a defendant
10 whose case you are then considering violated the statute,
11 then in that event the defendant's personal or private
12 reasons for violating the statute are of no consequence
13 so far as his or her guilt is concerned.

14 An exception to that comes under the matter
15 of coercion or duress or compulsion, which I will discuss
16 with you later on.

17 I instruct you these words, "knowingly
18 and wilfully," mean deliberately, intentionally. In
19 other words, you must be satisfied beyond a reasonable
20 doubt that the defendant acted with knowledge, consciously
21 and in the free exercise of his or her will. The words
22 "knowingly and wilfully" are opposed to the idea of an
23 inadvertent or accidental occurrence.

24 An act is done knowingly if it is done
voluntarily and purposely and not because of mistake,

1 11 rkmch

2 accident, negligence or other innocent reason.

3 An act is done wilfully if it is done
4 knowingly and purposely and not because of mistake. An
5 act is done wilfully if it is done knowingly and
6 deliberately. "Wilful" does not mean the defendant,
7 in addition to knowing what he or she was doing, must
8 also suppose that he or she was breaking the law.

9 As to the meaning of the word "unlawfully,"
10 of course here again it is not necessary that the
11 defendant know that he or she was violating any particular
12 law. Rather, it is sufficient if you are convinced
13 beyond a reasonable doubt that he or she was aware of the
14 general unlawful nature of his or her act.

15 The third element requires that the
16 Government prove beyond a reasonable doubt that the sub-
17 stance was in fact heroin. Just as with any other
18 component or element of the crime, the existence and
19 nature of narcotics may be proved by direct or circum-
20 stantial evidence. There need be no sample placed before
21 you, nor need there be testimony of chemists as to their
22 analysis. However, the evidence in the case must
23 convince you beyond a reasonable doubt that the material
24 in question was heroin.

25 On this point the Government contends that

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2 the substance allegedly placed in the carton of food
3 stuffs with respect to count 2 and delivered by the
4 seaman in New York was heroin.

5 In this regard, the Government relies upon
6 the testimony of Yuin that he knew the substance to be
7 heroin and that his alleged co-conspirators and Lai Mong
8 Wah referred to it as such.

9 In stating the Government's contentions, I
10 want you to understand that the defendants contend that
11 the facts are otherwise, and that the charges are
12 unfounded, and you must understand that throughout my
13 instructions that is their position, and furthermore
14 the evidence does not prove guilt beyond a reasonable
15 doubt.

16 I am going to read count 3 to you.

17 Count 3:

18 The Grand jury further charges:

19 In or about August 1970, in the Southern
20 District of New York, Lai Mong Wah, a/k/a "Wah Je,"
21 a/k/a "Gloria," a/k/a "Big Sister," the defendant,
22 unlawfully, wilfully and knowingly did receive, conceal,
23 sell and facilitate the transportation, concealment and
24 sale of a narcotic drug, to wit, approximately three pounds
of heroin, after the said narcotic drug had been imported

1 13 rkmch

2 and brought into the United States contrary to law,
3 knowing that the said narcotic drug had theretofore
4 been imported and brought into the United States contrary
5 to law in that the importation and bringing of any
6 narcotic drug into the United States, except such amounts
7 of crude opium and coca leaves as the Director of the
8 Bureau of Narcotics and Dangerous Drugs may find necessary
9 to provide for medical and legitimate uses only, is
10 prohibited.

11 That count also charges the defendant Lai
12 Mong Wah with a violation of the old law and that count
13 has nothing to do with the co-defendant Cheung Kin
14 Ping.

15 To find the defendant Lai Mong Wah guilty of
16 the offense charged in count 3, you must be satisfied
17 beyond a reasonable doubt that the Government has proved
18 each of the following essential elements, and here I will
19 be stating the four elements of count 3:

20 First, that in or about August 1979, Lai Mong
21 Wah either sold or received or concealed, or in any way
22 facilitated the sale, transportation or concealment of
23 a narcotic drug;

24 Second, that she did so unlawfully, wilfully
25 and knowingly and with the required criminal knowledge

1 14 rkmch

2 and intent;

3 Third, that the substance involved was in
4 fact heroin; and

5 Fourth, that the heroin was illegally imported
6 into the United States and that the defendant Lai Mong Wah
7 knew that it was illegally imported.

8 As to the first element, this element is
9 that the defendant Lai Mong Wah either received, concealed
10 or sold or in any manner facilitated the transportation
11 or concealment or sale of the narcotic drug. It is
12 not necessary that you find that the defendant did all of
13 these prohibited acts, but if you find beyond a reasonable
14 doubt that she committed any one of these acts, you may
15 find this first element is satisfied.

16 In describing the first element, I used
17 the words "received, concealed," and these words have
18 the same meaning in this context that they have in our
everyday life.

20 The term "facilitate" means to make easy or
21 less difficult, to aid or assist in furthering or advancing
22 in a meaningful way the acts prohibited by this statute,
23 that is, the sale, transportation or concealment in the
24 United States of an illegal narcotic drug.

25 The second element requires that the defendant

1 15 rkmch

2 acted unlawfully, knowingly and wilfully, and I already
3 defined these terms for you and what I said earlier
4 applies with the same force here.

5 I add this word of caution. The offense
6 charged may consist of the facilitation of the criminal
7 acts prohibited by this statute, and that is a rather
8 broad term encompassing activities that may be wholly
9 inconsistent, and also those performed with a definite
10 criminal intent. In this regard, it is particularly
11 important that you examine the knowledge and intent of
12 the defendant, because this essential element is
13 satisfied only if you find that the defendant acted
14 knowingly and wilfully, intending to facilitate the
15 sale or transportation or concealment of an illegal
16 narcotic drug, and mere innocent facilitation would not
17 constitute criminal misconduct.

18 The third element again is the fact that
19 the substance was in fact heroin, and I have previously
20 discussed this element with you in the context of count 2.

21 The fourth element that must be proven is
22 that the heroin was illegally imported into the United
23 States, and that the defendant Lai Mong Wah knew it
24 was illegally imported.

25 The Government contends that the testimony you

1 16 rkmch

2 have heard about Chang Yu Ching's trip to Hong Kong and
3 Lai's appearance at the wharf next to the slip which is
4 alleged to have brought the heroin demonstrates that she
5 knew that the heroin originated abroad, that is, overseas,
6 and that she knew from all the surrounding circumstances
7 that it was being brought into the United States illegally.

8 I will read count 4.

9 The fourth count charges the defendant Lai
10 Mong Wah with the illegal importation of narcotics in
11 violation of the new law, and it reads as follows:

12 The grand jury further charges:

13 In or about September 1971, in the Southern
14 District of New York, Lai Mong Wah, a/k/a "Wah Je,"
15 a/k/a "Gloria," a/k/a "Big Sister," and Chang Yu Ching,
16 the defendants, unlawfully, knowingly and intentionally
17 did import into the United States from a place outside
18 thereof, to wit, Hong Kong, British Crown Colony, a
19 Schedule I narcotic drug controlled substance, to wit,
20 approximately five pounds of heroin.

21 Now, to prove the offense charged in
22 count 4, the Government must establish each of the
23 following essential elements beyond a reasonable doubt:

24 First, that on or about the time specified in
the indictment the defendant Lai Mong Wah imported or

1 17 rkmch

2 caused to be imported into the United States a narcotic
3 drug controlled substance, that is, heroin.

4 Second, the Government must prove that the
5 substance was in fact a narcotic drug controlled substance
6 and for these purposes I instruct you that heroin or
7 heroin hydrochloride, as it is sometimes called, is a
8 narcotic drug controlled substance.

9 The third element which the Government is
10 required to prove on this count is that in importing or
11 causing heroin to be imported, the defendant Lai Mong
12 Wah acted knowingly and wilfully, and I have already
13 discussed with you before the meaning of these words.

14 Now, it is the Government's contention on
15 this particular count that this illegal importation
16 occurred when the defendant Lai Mong Wah received from
17 Hong Kong concealed in hollowed-out portions of two
18 coffee tables.

19 The defendant Lai Mong Wah denies participation
20 in this illegal importation or any of the crimes charged
21 here, which are factual issues which you are asked to
22 determine.

23 However, so it is clear to you which alleged
24 heroin shipment is the subject of count 4, I remind
25 you this count relates to the contention regarding the

1 18 rkmch

2 hollowed-out coffee tables.

3 I will now instruct you with regard to the
4 offenses charged in counts 5, 6 and 7 of this
5 indictment, and to save time I am going to discuss all
6 three counts together, but I remind you that each of these
7 three counts charges a separate offense, and you are to
8 consider each separately in your deliberations, and you
9 will be asked to state a separate verdict as to each
10 count.

11 Counts 5 and 7 charge the defendant Lai
12 Mong Wah with violations of the new law, and count 6
13 charges the defendant Cheung Kin Ping with a violation
14 of the new law.

15 You will recall that the new law which I read
16 to you earlier makes it a crime to possess with intent
17 to distribute a controlled substance, in this case,
18 heroin.

19 I will read the three counts, 5, 6 and 7.

20 Count 5. The grand jury further charges:

21 In or about the month of September, 1971,
22 in the Southern District of New York, Lai Mong Wah,
23 a/k/a "Wah Je," a/k/a "Gloria," a/k/a "Big Sister,"
24 the defendant, unlawfully, intentionally and knowingly did
25 distribute and possess with intent to distribute a

1 19 rkmch

2 Schedule 1 narcotic drug controlled substance, to wit,
3 approximately five pounds of heroin.

Count 6. The grand jury further charges:

5 In or about the month of September, 1971, in
6 the Southern District of New York, Cheung Kin Ping,
7 a/k/a "Siao Moo Bee," the defendant, unlawfully,
8 intentionally and knowingly did distribute and possess
9 with intent to distribute a Schedule I narcotic drug
10 controlled substance, to wit, approximately eight ounces
11 of heroin.

12 Count 7. The grand jury further charges:

13 In or about the month of September, 1971,
14 in the Southern District of New York, Lai Mong Wah,
15 a/k/a "Wah Je," a/k/a "Gloria," a/k/a "Big Sister," and
16 Larry Lombardi, the defendants, unlawfully, intentionally
17 and knowingly did distribute and possess with intent to
18 distribute a Schedule I narcotic drug controlled substance,
19 to wit, approximately one kilogram of heroin.

20 Before you can find a defendant guilty of
21 the crime charged in counts 5, 6 or 7, you must be
22 satisfied beyond a reasonable doubt that the Government
23 has proven each of the following elements:

24 First, that on or about the date set forth in
25 the count of the indictment you are considering the

1 20 rkmch

2 defendant named therein possessed with intent to distribute
3 a narcotic drug controlled substance, that is, heroin;

4 Second, that he or she did so unlawfully,
5 wilfully and knowingly, with the required criminal intent;
6 and

7 Third, that the substance which the defendant
8 possessed was in fact a narcotic drug controlled substance,
9 that is, heroin.

10 I would like to say a few further words on
11 these elements. You will note that the first element
12 of the offense is possession with intent to distribute.

13 Well, what does that phrase mean? Members
14 of the jury, the word "distribute" means the actual
15 constructive or attempted transfer of the drug.

16 I will now define for you the term "possession"
17 as used in this case. The law recognizes two kinds
18 of possession, actual possession and constructive
19 possession. A person who knowingly has direct physical
20 control over a thing at a given time, that is to say he
21 has it in his hand, is then in actual possession of it.
22 A person not in actual possession who knowingly has both
23 the power and the intention at a given time to exercise
24 dominion or control over a thing, either directly or
25 through another person, is then in constructive possession

1 21 rkmch

2 of it.

3 The words "dominion and control" include
4 a working relationship or a sufficient association with
5 those having actual physical custody as to enable the
6 person who claimed to have constructive possession to
7 assure or direct delivery or turning over of the articles
8 constructively possessed to another person as a matter of
9 course.

10 Now, the law also recognizes that possession
11 may be joint or it may be sole possession. If one
12 person alone has actual or constructive possession of
13 a thing, the possession is sole. If two or more persons
14 share actual or constructive possession of a thing, the
15 possession is joint.

16 You may find that the element of possession
17 as that term is used in these instructions is present if
18 you find beyond a reasonable doubt that the defendant
19 had actual or constructive possession, either alone or
20 jointly with others.

21 With respect to count 5, it is the Government's
22 contention in September of 1971 Lai Mong Wah unlawfully
23 possessed with intent to distribute approximately five
24 pounds of heroin, and the heroin referred to in this count,
25 the Government alleges, is the heroin that was said to have

1 22 rkmch

2 been hidden in the hollowed-out coffee tables, and later
3 hidden in the bathroom of the apartment at 133 Fourth
4 Street, East Fourth Street.

5 With respect to count 6, it is the Government's
6 contention that in September of 1971 the defendant Cheung
7 Kin Ping unlawfully possessed with intent to distribute
8 approximately eight ounces of heroin, and it is contended
9 that he received this eight ounces of white heroin from
10 Yui Kwei Sang, or George Yui, in Yui's apartment in
11 New York. Yui testified that he gave the heroin to the
12 defendant Cheung for Dr. Liu, and that thereafter he
13 received installment payments from Dr. Liu, and one of
14 these installments of money was brought to him by the
15 defendant Cheung.

16 It is the Government's contention with respect
17 to count 7 that in September of 1971 the defendant Lai
18 Mong Wah and Larry Lombardi did distribute and possess
19 with intent to distribute approximately one kilogram of
20 heroin. The Government contends that Yui testified that
21 he and the defendant Lai Mong Wah went to the home of
22 Larry Lombardi on East Broadway and sold him one kilogram
23 of heroin for \$18,000.

24 Now, these substantive counts are also
25 mentioned as overt acts in the conspiracy charged in

1 23 rkmch

2 count 1 of this indictment, and you will recall that
3 I instructed you earlier that an overt act need not be
4 a criminal act in and of itself, yet a criminal act
5 may be both a crime in and of itself and an overt act in
6 furtherance of a conspiracy.

7 Count 5 is referred to in overt act 7 in
8 count 1, and count 6 is referred to in overt act 8.

9 With regard to count 7, you will recall that
10 the witness Yui testified that when he and the defendant
11 Lai Mong Wah sold the one kilogram of heroin to Lombardi,
12 that Lombardi went into the kitchen and boiled a sample
13 in oil to test its quality. This incident is referred
14 to in overt act 7 of count 1, and there it is contended
15 Lombardi received two kilograms of heroin in furtherance
16 of the conspiracy.

17 Now, the second element requires the Government
18 to prove beyond a reasonable doubt as to these counts
19 that the defendant whose case you are considering acted
20 unlawfully, wilfully and with the required criminal
21 intent, and you will recall I instructed you regarding
22 the meaning of the words "knowingly and wilfully" and
23 those instructions apply throughout and here.

24 In addition, I direct your attention to the
25 words of the statute, the new law, which I already

1 24 rkmch

2 quoted.

3 A defendant must have either distributed or
4 possessed with intent to distribute the controlled
5 substance. There must be at least the specific intent
6 to distribute the narcotic substance possessed, that is,
7 heroin.

8 Now, you may infer an intent to distribute
9 the substance possessed and the quantity of heroin
10 possessed from all of the surrounding circumstances.

11 The final element is that the substance
12 was in fact a controlled substance, that is, heroin,
13 and here I remind you the Government need not produce
14 a chemist; just as with any other component of the crime,
15 the existence of and the dealing with heroin may be
16 proved by circumstantial evidence. You may consider the
17 fact that the substance was a powder, that the powder
18 appeared to those who saw it to be heroin, that the
19 persons handling the powder dealt with it as if it were
20 in fact heroin, that substantial prices were paid, and
21 that the persons dealing with the substance dealt in it
22 clandestinely.

23 You will also recall with regard to the substance
24 charged in count 7, the witness Yuin testified that in
25 his presence Lombardi conducted a boiling in oil test of

1 25 rkmch

2 the quality of the substance, and was satisfied that
3 the substance was in fact heroin, and paid \$18,000 for
4 it.

5 You may consider all the surrounding
6 circumstances in determining whether the substance charged
7 in any count was in fact heroin. However, the evidence
8 that you do rely upon to reach such a conclusion must be
9 sufficient so as to convince you beyond a reasonable
10 doubt.

11 The defendant Lai Mong Wah contends, and she
12 has testified, that although she may have done certain
13 acts, as alleged by the Government, that she did those
14 acts without criminal intent and under coercion from
15 Yui Kwei Sang, also referred to as George Yui.

16 As I have emphasized throughout my instructions
17 here today, an essential element of each of the
18 offenses alleged is for each of the defendants you are
19 considering to have acted knowingly and wilfully with the
20 necessary criminal intent.

21 Coercion, duress or compulsion may provide
22 a legal excuse for the crimes charged in the indictment.
23 These words refer to some unavoidable circumstances or
24 condition or fact which leaves a person no choice of
25 action except at risk of her life or personal injury.

1 26 rkmch

2 It means that a person committed the acts in question
3 because she was caused to do so by the use of force or
4 threat to use force, which resulted in a well-grounded
5 apprehension that unless the defendant committed the
6 acts it would result in her death or serious bodily
7 injury. The compulsion must be present and immediate,
8 and of such a nature to induce a well-founded fear of
9 impending death or serious bodily harm. There must be
10 no reasonable opportunity to escape the compulsion,
11 and, accordingly, participation in the commission of the
12 crime must be unavoidable.

13 If the evidence in the case should leave
14 you with a reasonable doubt whether Lai Mong Wah acted
15 wilfully, knowingly and voluntarily, that is to say
16 whether Lai Mong Wah was forced in effect to commit or
17 aid in the commission of a crime charged in the indictment,
18 which you are then considering, as a result of coercion
19 or compulsion or duress, as just explained, then you must
20 acquit her of that count.

21 If, on the other hand, you find she was not
22 threatened or if you find that such threats as you find
23 were made were not present and immediate, or not such as
24 to overbear her own free will, then you may consider
25 all the other evidence in determining whether she acted

1 27 rkmch

2 with the criminal intent, the wilfulness that the law
3 requires.

4 As to each act that you find that the defendant
5 Lai Mong Wah committed, you must examine separately whether
6 that act was committed with the requisite criminal intent.
7 Therefore, it is possible that you may find that
8 although the defendant Lai Mong Wah was acting under duress,
9 coercion, compulsion at one particular time in connection
10 with one particular count of the indictment, you may also
11 find at another time she may have acted knowingly,
12 wilfully and intentionally, and not because of duress,
13 compulsion or coercion in connection with some other count.

14 In other words, this issue requires you to
15 consider all the relevant circumstances separately with
16 respect to each separate crime charged against Lai Mong
17 Wah, and, as I mentioned before to you, the fear must
18 be present and immediate, and there must be no reasonable
19 opportunity to escape the compulsion, and for that reason
20 participation in the commission of the crime just be un-
21 avoidable.

22 I instruct you, in connection with this
23 matter, that the burden of proof is on the Government at
24 all times to show wilfulness and knowing, intentional,
25 criminal misconduct. A defendant does not have to prove

1 28 rkmch

2 her innocence, and in considering this defense of duress,
3 coercion or compulsion, you are now to regard it as an
4 element as to which there has been any shifting or changing
5 in the burden, because the burden of proof is at all
6 times on the prosecution in all criminal cases as to
7 all elements of the crime.

8 I am now going on to count 19 which is the
9 last count. The Government charges Cheung Kin Ping only
10 in count 19 with the separate crime of furthering the
11 conspiracy alleged in count 1 with the use of the telephone.
12 I will now read the last count, count 19, and in case
13 you are confused about the numbering, I would say to
14 you that the other counts have nothing to do with either of
15 these defendants, and for that reason the only counts
16 which are before you are counts 1, 2, 3, 4, 5, 6, 7 and
17 19.

18 Count 19. The grand jury further charges:

19 On or about the 30th day of March, 1972, in
20 the Southern District of New York, Cheung Kin Ping,
21 a/k/a "Siao Moo Bee," the defendant, did unlawfully,
22 knowingly, and intentionally use a communication facility,
23 to wit, a telephone, in committing, causing and facil-
24 itating the commission of an act which is a felony under
25 the federal narcotics laws, Title 21, United States Code,

1 29 rkmch

2 Section 809, et seq., to wit, the conspiracy charged in
3 count 1 of this indictment.

4 The applicable statute, 21 USC, Section 843(b),
5 reads in pertinent part as follows:

6 It shall be unlawful for any person to
7 knowingly use a communication facility in committing or
8 in causing or facilitating the commission of any act
9 or acts constituting a felony under any provision of
10 this subchapter. Then it goes on to say, for purposes
11 of this subsection, the term "communication facility"
12 means any and all public and private instrumentalities
13 of communication.

14 In order for you to find the defendant Cheung
15 Kin Ping guilty of this crime, the Government must
16 establish to your satisfaction beyond a reasonable doubt
17 the following essential elements:

18 That Cheung used a telephone on or about
19 March 30, 1972 in either committing or causing or facil-
20 itating the commission of any act or acts constituting
21 a felony under the federal narcotics laws. That is defined
22 in the statute.

23 Second, the Government must prove beyond a
24 reasonable doubt that the defendant Cheung Kin Ping
25 acted knowingly or intentionally in using the telephone

1 30 rkmch

2 to further this unlawful purpose.

3 The first element requires that you find the
4 defendant used the telephone to commit or cause or facil-
5 itate the commission of a felony under the federal
6 narcotic statute. The Government contends that
7 Cheung Kin Ping used the telephone for this unlawful
8 purpose when on March 30, 1972 he received a telephone
9 call in New York from Ting Yee Fong, an alleged co-
10 conspirator under count 1, who was then in the Panama
11 Canal Zone, and you will recall that this telephone
12 call is also alleged as overt act 24 in the conspiracy
13 count.

14 To satisfy this element of the offense
15 charged in count 19, the Government must prove beyond a
16 reasonable doubt that this use of the telephone was to
17 commit or cause or facilitate the commission of a felony
18 under the federal narcotic statute. It is a felony to
19 conspire to violate the federal narcotic laws. Therefore,
20 if you find that this telephone call was made to facilitate
21 the conspiracy charged in count 1 of the indictment,
22 then this portion of the first element would be satisfied.

23 For purposes of the statute, I will tell you
24 that "commit" means to actually perpetrate the crime of
25 conspiracy, while "cause" means to motivate it or bring it

1 31 rkmch

2 about. "Facilitate" means to aid or assist or further
3 the conspiracy.

4 Therefore, if you find that defendant's use
5 of the telephone and what he said during that telephone
6 conversation furthered or assisted the conspiracy in
7 a meaningful way, then this element would be satisfied.

8 Of course, it is not a crime to use a
9 telephone for ordinary conversation. All this statute
10 prohibits is the knowing and intentional use of the
11 telephone to facilitate the commission of a felony under
12 the narcotics laws. If no crime is being committed or
13 facilitated, then the use of the telephone cannot be
14 a crime.

15 It is the Government's contention that this
16 telephone call facilitated the conspiracy charged in
17 count 1 of this indictment and, therefore, you must
18 determine with regard to this count whether there was in
19 fact a conspiracy in existence for this telephone call
20 to facilitate.

21 The second element requires the Government
22 to prove that the defendant acted knowingly and
23 intentionally and I have previously defined the word
24 "knowingly" for you in my instructions, and those
instructions apply here as well.

1 32 rkmch

2 "Intentionally" means deliberately or purposely,
3 and I instructed you earlier with regard to any facilitation
4 that the defendant's acts must have been knowing and
5 wilful and not due to inadvertence, negligence or mistake.

6 I am almost finished, but at the risk of
7 being repetitious, I would like to tell you that if you
8 find as to any defendant and any count in this indictment
9 that you are not convinced that the Government has proven
10 guilt beyond a reasonable doubt, then your clear duty is
11 to acquit, and, by the same token, if the Government has
12 proved the guilt of a particular defendant whose case you
13 are then considering beyond a reasonable doubt as to an
14 particular count in the indictment, then it is your clear
15 duty to convict him or her on that count.

16 The issue with which you are concerned is
17 whether the Government has proven the facts as alleged in
18 this indictment beyond a reasonable doubt.

19 In summation, one of the attorneys told you
20 that a verdict of guilty would be a stamp of approval
21 with respect to the practices of the Government in its
22 dealing with informers, accomplices or cooperating
23 individuals who testify to their prior criminal dealings
24 and implicate others.

25 Members of the jury, these great issues of

1 33 rkmch

2 law enforcement policies are not your concern in this
3 case. There is nothing improper about the use of the
4 testimony of accomplices, although, as I instructed you
5 earlier, their testimony must be evaluated with care.
6 This has been done for centuries in this country and it is
7 nothing new. By giving a verdict here, you are not asked
8 to determine whether or not you agree with the policies or
9 the laws relating to the use of testimony of accomplices
10 or cooperating individuals.

11 Putting it another way, if you are satisfied
12 beyond a reasonable doubt that a defendant committed the
13 offense charged in a particular count of the indictment,
14 then you must find that defendant guilty. The proof must
15 satisfy you beyond a reasonable doubt, but that proof may
16 be supplied wholly or in part by a person who was an
17 accomplice, a co-conspirator or a cooperating individual.

18 The Government wins a case whenever justice
19 is done. If justice requires an acquittal, that is your
20 duty, and the counterpart of that statement is equally
21 true.

22 Please focus your attentions on the real
23 issues in this case and decide them and if, as you were
24 asked in summation by one of the lawyers, you want to send
25 a message to the powers that be, then when the case is over

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2 write to your congressman, but don't let that desire to
3 send any message affect you in the meantime in the
4 performance of your sworn duty.

5 Under your oath as jurors, you can't allow a
6 consideration of the punishment or sentence which might
7 be imposed upon a defendant, if convicted, to influence
8 your verdict in any way, or in any sense to enter into your
9 deliberations. The duty of imposing sentences rests
10 exclusively with the Court. Your function is to weigh
11 the evidence and decide the facts.

12 You are to decide the case upon the evidence
13 and the evidence alone, and you must not be influenced
14 by any assumption, conjecture, sympathy, or any inference
15 not warranted by the facts until proven to your satis-
16 faction.

17 A word about deliberating. Each of you is
18 entitled to his or her opinion, and each should exchange
19 views. Take your time about it. Be polite and considerate
20 of each other in your discussions. That is the purpose of
21 jury deliberations, to discuss and consider the evidence,
22 to think about it together, to listen to the arguments of
23 your fellow jurors, and to present your individual views,
24 to consult with one another, and to reach a fair and just
25 verdict, based solely and wholly on the evidence, if you

1 35 rkmch

2 can do so without violence to your individual judgment,
3 but each one of you must decide the case for yourself
4 after discussion with fellow jurors.

5 You should not hesitate to change an opinion
6 you may hold which, after discussion with fellow jurors,
7 appears erroneous in the light of the discussion viewed
8 against the evidence and the law. However, if after
9 carefully considering and weighing all the evidence and
10 listening to the argument of your fellow jurors you enter-
11 tain a conscientious view that differs from the others,
12 you are not to yield your judgment simply because you are
13 outnumbered or outweighed, because the final vote of each
14 of you will reflect your individual conscientious
15 judgment as to how the case should be decided.

16 In order to find a verdict as to either defendant
17 on either count, the jury must be unanimous.

18 I ask you to deliberate in a friendly and
19 courteous fashion and not to discuss the case in any
20 restaurant or to talk about it at any time when all jurors
21 are not equally available to participate, so I urge you
22 to confine your deliberations to the jury room.

23 It might be, in the course of your deliberations
24 you may desire to have some part of the testimony read
25 to you or you may find that you are uncertain as to some

1 36 rkmch

2 meaning of my instructions, or you may wish to hear part
3 of them again, or see an exhibit. In such a case, you may
4 send out such a note to the Court through your foreman
5 asking for whatever the jury wishes to have.

6 The jury may send for all exhibits except
7 for the contraband items, and if you want to inspect
8 those you may inspect those in the courtroom, or you may
9 send for any particular exhibits.

10 The notes will be signed by the foreman, and
11 I want to admonish you, in communicating with the Court
12 by note, you are not to say how the jury's vote is. It
13 is not to be put in any note.

14 Before asking me to have any testimony read
15 to you, I do hope you will try to exhaust your collective
16 recollection by discussion. However, if the jury wants
17 testimony read, you will be brought back into the
18 courtroom and the court reporter will read it to you at
19 your request. I urge you to make your request as precise
20 as you can so we will know what you want to hear.

21 When and if the jury reaches a verdict, the
22 jury foreman, Mrs. Shapiro, will inform the United States
23 Marshal that the jury has reached a verdict, and you don't
24 have to tell the marshal what the verdict is; just tell
25 the marshal you have reached a verdict and you will be

1 37 rkmch

2 brought back into court so your verdict may be announced.

3 If you ask for a copy of the indictment by
4 note, that will be sent in to you. As I mentioned to you
5 earlier, the indictment is merely an accusation. It has
6 no status as evidence.

7 Now, let me close by stating to you that your
8 oath sums up your duty, that is, you will well and truly
9 try the issues between each of these defendants and the
10 Government of the United States based solely upon the
11 evidence and the Court's instructions as to the law and
12 a true verdict give. It is important to each of the
13 defendants, it is important to the Government, it is
14 important to you.

15 At this time I want to thank the two alternates.
16 You have been very prompt in your attendance here, very
17 attentive during the trial, and I find we have been
18 fortunate enough, we haven't had any illness or problem
19 which made it necessary to excuse any juror, so I am now
20 able to let you go at this time, Mr. Frankel and Mr.
21 Kostas, and the clerk has your jury certificate, and
22 you do not have to return. You may take the certificates
23 with you and you may now withdraw from the courtroom, with
24 one additional point I want to make to you. Do not discuss
this case and do not express any opinion about the matter

11:03

1 38 rkmch

2 and do not speak to any member of the jury about it until
3 after the trial is over and the jury has been discharged,
4 and that might not occur today, so do not do any of those
5 things until you are certain the case is over.

6 You two men may withdraw now.

7 Swear the United States Marshal.

8 (Marshal sworn.)

9 THE COURT: I am going to ask you members of
10 the jury to remain seated where you are briefly, and don't
11 discuss the case, because I am going to confer with the
12 attorneys in the next room to see if there are additional
13 instructions which they would like to have mentioned to
14 you or anything I might not have covered. Please don't
15 discuss the case because there is a possibility I might
16 find it proper to change or amplify something that I may
17 have said to you, so just remain here in the custody of
18 the Marshal and don't talk about it.

(In the robing room)

19 THE COURT: Do you have any comments or
20 requests, Mr. Engel?

21 MR. ENGEL: Your Honor did not charge aiding
22 and abetting and I would like it charged briefly as you
23 did in the Pass case at 1639 of the record, just a very
24 brief standard aiding and abetting charge as to the

1 39 rkmch
2 substantive counts.

3 THE COURT: Perhaps it should have been. I
4 think it is unnecessary in the context of this case. I
5 think we have charged them about joint possession, and
6 I think the evidence is so very clear that we are not really
7 dealing with an aiding and abetting situation. Both
8 these people are principals and clearly so.

9 I think it would be inappropriate at this time
10 to dive in with that additional concept, so I believe I
11 will decline to do so.

12 MR. ENGEL: Very well, your Honor. Nothing
13 else.

14 THE COURT: Mr. Slepian?

15 MR. SLEPIAN: I have one request in relation
16 to count 3. You stated to the jury that Lai Mong Wah's
17 appearance at the wharf demonstrated that she knew it was
18 illegally brought in.

19 THE COURT: I said that was their contention.
20 I didn't say it demonstrated. I said it was the
21 Government's contention.

22 MR. SLEPIAN: In count 4, you indicated that
23 Lai Mong Wah denied participation, but you never made
24 that representation to the jury after you stated to the
25 jury that Lai Mong Wah demonstrated by being at the wharf

1 40 rkmch

2 and therefore it was illegally brought in.

3 I would request the Court to indicate that
4 Lai Mong Wah, in relation to count 3, denies ever being
5 at the wharf in Staten Island, and therefore denies
6 knowledge of it being illegally imported into this
7 country.

8 THE COURT: I am willing to give that charge.
9 I think that is reasonable. But I thought I had made
10 it clear whenever I stated the Government's contention
11 they would understand that the defendants deny it.

12 MR. SLEPIAN: It was stated in count 3 --

13 THE COURT: I don't want to differentiate
14 between the two defendants unduly by any additional
15 instruction.

16 MR. ENGEL: I recall specifically your Honor
17 did state whatever is the Government's contention, I want
18 the jury to understand --

19 MR. SLEPIAN: Except in count 4, it specifically
20 followed with the Government's contention --

21 THE COURT: I really don't think you quite
22 have the right, but I will amplify it, and I want to do it
23 in such a way that it doesn't reflect adversely on Cheung.

24 MR. ROSINTHAL: I respectfully except to your
Honor's charge that the question of reasonable doubt is

1 41 rkmch

2 erased when the jury has an abiding conviction. I am not
3 certain whether you said "clear and abiding" or merely
4 "an abiding conviction of the defendant's guilt.

5 THE COURT: You may have an exception as to
6 that.

7 MR. ROSENTHAL: I also respectfully except to
8 the very last portion of your Honor's charge in which you
9 usurp the function of the Assistant United States Attorney
10 which is afforded him in his rebuttal summation to answer
11 any argument of counsel that is made in summation.

12 THE COURT: All right.

13 MR. ROSENTHAL: I don't think it is proper for
14 the Court to do so.

15 THE COURT: All right. I think the trial
16 court and common law court still has the right to spear
17 a red herring, but you may have an exception.

18 MR. ROSENTHAL: I don't think it's a red
19 herring.

20 THE COURT: We used to hear about Watergate
21 and for awhile here I heard about Biafra --

22 MR. ROSENTHAL: This is typical of Watergate.
23 You know the facts of this case better than the jury.
24 You know that my man was convicted in Florida. You know
he served time. You know that the indictment was

1 42 rkmch

2 dismissed. You know that this indictment is returned
3 2-1/2 years after he is released from prison where he has
4 no connection whatsoever.

5 THE COURT: There is a time and place to raise
6 those points with me, I believe.

7 Let me have Mr. Slepian's request and I want
8 to see if I can add to it in such a fashion that will
9 not redound adversely to the co-defendant. They are still
10 sitting out there so let's go.

11 MR. ENGEL: The Government would request that
12 whatever request is given with respect to Mr. Slepian's
13 request, that it be sort of a general nature.

14 THE COURT: That is what I want to do. If
15 I pinpoint Lai Mong Wah, it hurts Cheung.

16 MR. SLEPIAN: I wish I could have it exactly
17 phrased without causing any problems for anybody. I
18 am asking the Court that, in count 3 you stated knowledge
19 of importation --

20 THE COURT: I will take care of the problem.

21 (In open court; jury present)

22 THE COURT: Members of the jury, I want to make
23 it absolutely clear to you that whenever during my
24 instructions to you I stated or summarized or explained
25 any factual contentions which I understood the Government

1 43 rkmch

2 to be asserting in this case, I want to make it also
3 clear to you that the factual contentions of the defendants
4 are that such is not the case and that the evidence does
5 not show the facts contended by the Government.

6 I do believe I said that once, but I am conscious
7 of the fact that on some occasions I may have said that
8 so-and-so denies such-and-such, and perhaps on other
9 occasions I failed to do so, so I want you to understand
10 that the stating of any contention is not to imply that
11 it is so in any way. That is entirely within your province
12 and not mine, and you are to understand that all such
13 contentions are disputed by the defendants, and you will
14 recall the testimony of Lai Mong Wah, and my attention has
15 been directed to whether the jury could regard attendance
16 at the wharf or whether the jury should regard attendance
17 at the wharf as knowledge that the heroin came from
18 overseas.

19 Lai Mong Wah testified she was not at the wharf.

20 I am sure you do recall all the evidence in the case, but
21 I do not want anything I said in summarizing contentions
22 to affect you in your determination of the facts, because
23 that is your function, it is not mine, to determine what
24 the evidence shows.

25 You may now withdraw and commence your

1 44 rkmch

2 deliberations.

3 (At 12:37 p.m., the jury retired to commence
4 deliberations.)

5 THE COURT: Is that satisfactory to you?

6 MR. SLEPIAN: Yes, it was satisfactory.

7 THE COURT: Thank you.

8 We will be in recess. I don't know just
9 when the United States Marshal is taking them to
10 lunch -- 1:00 o'clock.

11 MR. SLEPIAN: Does that mean we should be back
12 here from 2:00 o'clock on?

13 THE COURT: Maybe 2:15. That would be my
14 thought.

15 MR. ENGEL: Are we excused until 2:15?

16 THE COURT: Off the record.

17 (Discussion off the record)

18 MR. ROSENTHAL: Your Honor, I am prepared to
19 stipulate on behalf of my client Cheung Kin Ping that
20 if, during their deliberation the jury requests any
21 exhibits, the clerk may be authorized by the Court to send
22 them in automatically.

23 THE COURT: I will do so if I regard the note
24 as unambiguous.

25 MR. ROSENTHAL: Naturally I would rely on

End
Charge

No. 72-262 - rld
 21 USC 841(a)(1)
 21 USC 952(a)
 18 USC 2
 M/S \$25,000 - 15 years

UNITED STATES OF AMERICA)
)
 v)
)
 SAMMY CHO,)
 KIN PING CHEUNG, and)
 LEE FONG TING)
 _____)

INDICTMENT

The Grand Jury charges that:

Count I

On or about the 5th day of April, 1972, in the Southern District of Florida, the defendant

LEE FONG TING

knowingly and intentionally did possess with intent to distribute 22 pounds of heroin, a Schedule I narcotic drug controlled substance; in violation of Title 21, United States Code, Section 841(a)(1).

Count II

On or about the 5th day of April, 1972, in the Southern District of Florida, the defendant

LEE FONG TING

knowingly and intentionally did distribute approximately 22 pounds of heroin, a Schedule I narcotic drug controlled substance; in violation of Title 21, United States Code, Section 841(a)(1).

Count III

On or about the 5th day of April, 1972, in the Southern District of Florida, the defendant:

SAMMY CHO,
 KIN PING CHEUNG, and
 YEE FONG TING

did knowingly and intentionally import into the United States, from a

place outside thereof, approximately 22 pounds of heroin, a Schedule I narcotic drug controlled substance, in violation of Title 21, United States Code, Section 952(a), and Title 18, United States Code, Section 2.

Count IV

On or about the 5th day of April, 1972, in the Southern District of Florida, the defendants

SAMMY CHO and
KIN PING CHEUNG

knowingly and intentionally did possess with intent to distribute approximately 22 pounds of heroin, a Schedule I narcotic drug controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

A TRUE BILL

FOREMAN

ROBERT W. RUST
UNITED STATES ATTORNEY

By:

P. D. Aiken
Assistant United States Attorney

UNITED STATES OF AMERICA v. LOBAY, et al.
 CHO KWON, CHEUNG YIN PING, a/k/a SIAT MOO LEE, LAI HONG WAI,
 a/k/a WAH JE, GLORIA, BIG SISTER and CHANG YU CHING, Defendants.

75 Cr. 614-CLB

75-2352

'To the extent the within motion seeks to dismiss for undue pre-indictment delay, it is denied.] There is no showing of intentional delay to prejudice movants' rights, or contrived procrastination to seek tactical advantage. Indeed, pre-indictment delay usually redounds to a defendant's advantage, since witnesses forget, become more vulnerable to cross-examination, and it is the prosecutor who must discharge the burden of proof. See United States v. Eucker, ____ F.2d ____ (2d Cir. March 8, 1976).

There is no basis to dismiss on grounds of double jeopardy. The Court has examined the Florida indictment 72-262 Cr.-CA (United States of America v. Cho, et al.). Insofar as movant Ping, there indicted as Yin Ping Cheung, is concerned, he was charged there (Count III) with having, on or about April 5, 1972 in the Southern District of Florida, imported twenty-two (22) pounds of heroin into the United States in violation of 21 U.S.C. §952(a) and 18 U.S.C. §2. Count IV of that indictment charges that at the same time and place, he and Cho possessed the same twenty-two (22) pounds of heroin with intent to distribute, in violation of 21 U.S.C. §841(a)(1).

The conspiracy charged in the instant indictment, Count One, is alleged to have existed in this District between January 1, 1970 and April 30, 1972. The importation charged here as an overt act took place in New York Harbor, not Florida. The overt acts charged, some twenty-six (26) in number, did not, so far as appears, take place in Florida. The substantive count of which defendant was acquitted in Florida does not in any event merge with the crime of conspiracy in this District. United States v. Nathan, ____ F.2d 456 (2d Cir.), cert. denied 414 U.S. 823 (1973); United States v. Ortega-Alvarez, 506 F.2d 455 (2d Cir.), cert. denied 421 U.S. 910 (1975).

Count Nineteen could not have been prosecuted in Florida for want of venue. Count Eight differs on its face as to time and place from the Florida charges.

[To the extent based on double jeopardy, the motion to dismiss is denied.]

There remains for decision whether a new suppression hearing need be held concerning a statement made on April 5, 1972 by movant concerning his intent to cause narcotics to be smuggled. The District Court in the Florida trial held a suppression hearing, and denied an identical motion. Unfortunately, its decision or findings have not been available to this Court, although requested. In the absence thereof, regularity is to be assumed.

This Court has reviewed the transcript of that hearing. On that transcript, a finding that the admission was voluntary and admissible could not be regarded as clearly erroneous. Defendant should be collaterally estopped to relitigate the issue here. The Court declines to hold a further suppression hearing on a claim regarded as not even colorable.

All other issues raised in the within motion, to the extent not determined by agreement, or oral directions of the Court (see transcript of April 20, 1976), are denied.

So Ordered.

Dated: New York, New York
May 13, 1976

Charles L. BRIEANT

CHARLES L. BRIEANT
U. S. D. J.

1 29 rkmch

Ting-cross * * * * *

2 the other day?

3 MR. ROSENTHAL: I don't think so.

4 MR. ENGEL: The portion of Mr. Ting's testimony
5 was deemed marked.

6 THE COURT: What is the number?

7 MR. ENGEL: It's 3547.

8 THE COURT: Isn't there a defendant's letter
9 on this?

10 MR. ENGEL: No. They were received as
11 3547 in evidence.

12 MR. ROSENTHAL: "Yee Fong Ting was called on
13 behalf of the Government and was sworn and testified through
14 an interpreter as follows:

15 "THE WITNESS: I told lies before. Now I
16 want to tell the truth."

17 I am wrong. The judge struck that.

18 THE COURT: The jury will disregard that par-
19 ticular statement. Strike it out of the record.

20 MR. ROSENTHAL: "THE COURT: Do you understand,
21 Mr. Ting, you are supposed to answer the questions that
22 are posed but you are not to volunteer answers. You are
23 not to give information that is not responsive to the
24 question.

25 "THE INTERPRETER: Yes, sir, he understands.

1 30 rkmch

"Ting

2 "DIRECT EXAMINATION

3 "BY MR. KOKUS:" --

4 -- which I am sure Mr. Engel will agree was
5 an Assistant United States Attorney in Florida --

6 "Q Will you state your name and age?

7 "A Yee Fong Ting, 48 years of age.

8 "Q Did you come to Miami on April 5, 1972?

9 "A Yes, sir.

10 "Q Were you a crewman on the ship Laomedon?

11 "A Yes, sir.

12 "Q Did you bring a suitcase with you?

13 "A (No response)

14 "Q How long had you been a crewman on that ship?

15 "A I have been a crewman for 20 years but on
16 this ship, 2 months.

17 "Q In what port did you become a crewman on the
18 ship?

19 "A I was assigned by the company on this ship.

20 "Q In what port did you join the ship?

21 "A Hong Kong.

22 "Q What port did you join the ship?

23 "A Hong Kong.

24 "Q What date of what month did you join the ship
25 in Hong Kong?

1 31 rkmch

"Ting

2 "A February 13.

3 "Q What year?

4 "A 1972.

5 "Q What did you bring to the ship when you joined
6 the ship in Hong Kong?

7 "A Someone asked me to bring something and that is
8 why I am in court."

9 That was stricken, Judge. I am sorry.

10 THE COURT: It's stricken here also.

11 MR. ROSENTHAL: "Q What articles or goods
12 did you bring on the boat?

13 "A A suitcase.

14 "Q Mr. Ting, will you please examine this
15 Government's exhibit and tell me if this is the suitcase?

16 "A Yes, sir, this is the one.

17 "Q Did you examine what was in the suitcase
18 today, just now?

19 "A Yes. White stuff.

20 "Q Was that material in the suitcase the day you
21 brought it on the ship in Hong Kong?

22 "A Yes, sir, the same.

23 "Q Where did you get the suitcase from?

24 "A A woman gave it to me in Hong Kong.

25 "Q Do you know who that woman is?

1 32 rkmch

"Ting

2 "A No, I don't, sir. Someone told her to bring
3 the suitcase to me."

4 The latter part of that answer was stricken
5 out about "someone told her."

6 "Q Did you have any conversation in Hong Kong
7 with anybody about bringing the suitcase aboard the
8 ship?

9 "A Yes.

10 "Q With whom?

11 "A Mr. Cho.

12 "Q Who is Mr. Cho? Would you please point out
13 the man you had a conversation with if he is in the
14 courtroom?

15 "A His last name is Cho.

16 "Q Will you step over here, please? Will you
17 identify that person? Is it the man on this side?

18 "A Yes (indicating defendant Cho).

19 "Q Did you have conversations in Hong Kong with
20 anybody else concerning bringing that suitcase aboard the
21 ship?

22 "A He was the one.

23 "Q Where and when did you have this conversation
24 with the defendant Cho?

25 "A The first time they started to tell me about

1 33 rkmch

2 bringing the suitcase was the end of January. On
3 February 8 they brought the suitcase.

4 "Q Who brought it?

5 "A February 12.

6 "Q Was there anyone else present besides you and
7 Mr. Cho during these conversations?

8 "A His wife.

9 "Q Whose wife? , ,

10 "A Mr. Cho's wife.

11 "Q During the first conversation you had with
12 Mr. Cho, what did he say to you?

"A He asked me to bring the suitcase into the
country and then he come to pick it up.

15 "Q Was there any talk about money during this
16 conversation?

17 "A Yes, sir, we did.

18 "Q What did you or what did he say concerning
19 money?

20 "A He said he will pay him \$1,000 and after he
21 arrive here, he would pay him \$600 for each 2 pounds.

22 "Q Was anything else said during the first
23 conversation you had with Mr. Cho?

24 "A The first time there were four. They didn't
25 discuss about this business. This is the second time when

1 34 rkmch
2 they met.

"Ting

3 "Q Was anything else said during the second visit
4 by Mr. Cho to you? Was anything else discussed?

5 "A No, that is all, all about this business.

6 "Q Did you have any later meetings with Mr. Cho
7 concerning bringing this out of Hong Kong?

8 "THE INTERPRETER: He said Mr. Cho told him
9 don't let anybody know, only between you and I.

10 "MR. KOKUS: That was not the question.

11 "Q When did Mr. Cho say this to you?

12 "A At the second meeting.

13 "Q Did you see Mr. Cho at any time after that
14 in Hong Kong?

15 "A No.

16 "Q Did Mr. Cho tell you where to bring the
17 suitcase?

18 "A He told me to bring it to the United States,
19 then telephone him, and he would come to pick it up.

20 "Q Did he tell you where in the United States?

21 "A Anywhere in the United States.

22 "Q Did he give you a phone number at which to
23 reach him?

24 "A Yes. He gave me the phone number.

25 "Q When you arrived in the United States, did you

1 35 rkmch

"Ting

2 ever call him?

3 "A I did not call him from the United States.
4 I telephoned him when I was in Panama.

5 "Q When you were in Panama?

6 "A March 27 or March 28.

7 "Q What, if anything, did Mr. Ting say to Cho when
8 he called him from Panama?

9 "A I telephoned at the club and he wasn't there,
10 so I talked to Mr. Cheung.

11 "Q Do you know Mr. Cheung?

12 "A Yes, I met him once before.

13 "Q Where did you meet him?

14 "A I met him in Hong Kong and here.

15 "Q When did you meet him in Hong Kong?

16 "A In January.

17 "Q What did you talk about with Mr. Cheung in
18 Hong Kong?

19 "A Mr. Cheung asked me to bring some clothes
20 for him.

21 "Q Were these clothes his so far as you know?

22 "A Two suit, dresses, and some Chinese long dresses
23 and one viest, four Chinese long dresses.

24 "Q Were they in any package or suitcase?

25 "A No. They were in another locked suitcase.

1 36 rkmch

"Ting

2 "Q Did he give you this other suitcase?

3 "A Yes. He gave me the suitcase in Hong Kong.

4 "Q What did that suitcase look like?

5 "A One is black and one is yellow.

6 "Q Did you have any other conversations with
7 Mr. Cheung in Hong Kong?

8 "A No.

9 "Q When you talked to Mr. Cheung on the phone,
10 what did you say to him?

11 "A I asked for Mr. Cho and he wasn't in, so I
12 talked to Mr. Cheung, so I told him that I got the clothes
13 for him and I also asked him to give a message to Mr. Cho
14 about his luggage, and I will be in Miami about April 5 or 6.

15 "Q What happened when you reached Miami? What
16 did you do then?

17 "A The two came to see me and wanted to pick up
18 their things separate. The first time he said two, the
19 second time he said three.

20 "Q Were there two or three men?

21 "A Two.

22 "Q Approximately what time did these two men come
23 to see you?

24 "A 10:00 p.m., April 5.

25 "Q Who were these two men?

1 37 rkmch

"Ting

2 "A One of them Cheung and one of them Cho.

3 "Q Are those two men present in the courtroom
4 today?

5 "A Yes, sir, they are here.

6 "Q Where did they meet you?

7 "A One stayed in the car and one came up to the
8 ship.

9 "Q Who came up to the ship?

10 "A Cheung.

11 "Q What, if anything, did he say to you when he
12 came up to the ship?

13 "A He asked me if I brought his clothes.

14 "Q Excuse me?

15 "A He asked me did I bring his clothes.

16 "Q What did you say?

17 "A I said yes, but I have to wait until I get
18 to New York.

19 "Q Did you give Mr. Cheung his clothes?

20 "A No, I didn't give it to him.

21 "Q Why didn't you give him his clothes?

22 "A Because I checked them for New York. Mr.
23 Cheung's luggage I checked in New York, not at this seaport.

24 "Q Did Cheung say anything else to you?

25 "A I asked Mr. Cheung about Mr. Cho, is he here,

1 38 rkmch

"Ting

702

2 and he said yes, he is in the car, so I brought down the
3 suitcase.

4 "Q Did Mr. Cheung come with you when you brought
5 the suitcase down?

6 "A While I was bringing this down from the ship,
7 Mr. Cho was in the car.

8 "Q Who did you give the suitcase to?

9 "A I gave it to Mr. Cheung.

10 "Q What did he do with the suitcase?

11 "A He put it in the trunk.

12 "Q What happened then?

13 "A I went back to the ship.

14 "Q Sir, I want you to look at Government's
15 Exhibit 3 for identification.

16 "A I didn't write that.

17 "Q Those are the exhibit tags. You may be seated

18 now.

"Is this the suitcase you had at Miami seaport?

19 "A Yes, sir, that is the one.

20 "Q Is this the one you took down to the automobile?

21 "A Yes, sir, this is the one.

22 "Q Sir, did you in fact receive any money for
23 bringing this suitcase to the United States?

24 "A They paid me a thousand dollars in Hong Kong.

1 39 rkmch

"Ting

703

2 "Q Who are 'they'?

3 "A Cho.

4 "Q Mr. Cho. Anyone else?

5 "A A woman brought the suitcase to me.

6 "Q Did anybody associated with the United States
7 Government make any promise to you for your testimony
8 here today?

9 "A No."

10 That was direct examination of the witness
11 Ting. The cross-examination was by Mr. Masin, who was
12 the attorney for the defendant Sammy Cho.

13 "Q When was the first time you looked in the
14 suitcase to know what you had in there?

15 "A February 4.

16 "Q Who was with you at that time?

17 "A I was the only one; nobody with me.

18 "Q Why did you look in the suitcase?

19 "A We had to go to Hong Kong so I had to open the
20 suitcase and see what was inside.

21 "Q Did you know what was inside?

22 "A No, I didn't know what was inside before I
23 opened it.

24 "Q According to your testimony, you were getting
25 paid a great deal of money to bring the suitcase of

1 40 rkmch

"Ting

2 narcotics or so. What did you think was in it, narcotics?

3 "A I guess so, but I really didn't know what
4 was inside.

5 "Q This money you are talking about, the thousand
6 dollars, is that American dollars or Hong Kong dollars?

7 "A American money.

8 "Q Do you believe in God?

9 "A Yes, I believe in God.

10 "Q Where did come from in China originally?

11 "A Chungtung Province, Cheking.

12 "Q Is that on the mainland of China?

13 "A Yes, it's on the mainland.

14 "Q When was the last time you lived on the
15 mainland?

16 "A I have been living in Hong Kong for 23 years.

17 "Q The question was, when was the last time you
18 were on the mainland of China?

19 "A When the communists took over.

20 "Q When did you leave?

21 "A The year the communists took over I left for
22 Hong Kong.

23 "Q Have you been back?

24 "A I went back there.

25 "Q When was that?

1 41 rkmch

"Ting

2 "A Ten years ago.

3 "Q Have you ever been picked up or caused to be
4 brought from Red China any heroin?

5 "A No, this is the first time.

6 "Q At that time when you first talked to the
7 Government, did they advise you of your rights with regard
8 specifically to your right to counsel and your right to have
9 an attorney at that time and your right to remain silent?

10 "MR. KOKUS: Your Honor, I will object to this
11 question" --

12 THE COURT: You don't have to read the
13 colloquy. It was either sustained or overruled.

14 MR. ROSENTHAL: "A He might have mentioned
15 it to me but I can't recall.

16 "Q You do not recall what he said to you at that
17 time?

18 "A What they say to me I don't remember. I don't
19 remember. I remember what I said to them.

20 "Q Isn't it a fact when you talked to the
21 Government at that time that he told the Government he
22 has known the defendant Cheung since sometime in 1970?

23 "A Yes, I said that.

24 "Q Did he tell the Government that he knew Cheung
25 from having sailed with him on various ships?

1 42 rkmch

"Ting

2 "A No, we don't work together on the ship.

3 "Q Did you tell the Customs agent that you worked
for the same steamship line as Mr. Cheung did?

5 "A No, I didn't say that.

6 "Q Have you had any difficulty recently in the
7 Dade County jail with your head?

8 "A Yes, I got headaches.

9 "Q Have you been complaining to the authorities
10 that your head has been bothering you constantly?

11 "A Yes, I told them.

12 "Q For how long during your lifetime have you had
13 problems like that?

14 "A What do you mean by problems, problems with
15 my head?

16 "Q How long have you had the problem that you
17 have been complaining about now?

18 "THE INTERPRETER: He said when he got
the headaches in the jail, they had doctors give him the
19 prescription.

21 "Q How long have you been suffering with these
22 types of problems with your head that you have needed
23 prescriptions for?

24 "A My headaches are from Cho Cheung and I need to
25 see doctor.

1 43 rkmch

"Ting

2 "Q Your headaches are from this case?

3 "A When I think about my family, I get headaches.

4 "Q Ask him whether or not he got any headaches
5 when he first got involved with the 22 pounds of heroin.

6 "THE WITNESS: No, it's not because if the
7 suitcase, it's because I am homesick.

8 "Q Mr. Ting, you indicated the first time you
9 indicated you knew what was in that suitcase was on board
10 ship, and you indicated that an unknown person had handed
11 it to you in Hong Kong. Where did you get the keys which
12 enabled you to open the suitcase?

13 "A A woman. The woman gave me the key.

14 "Q Did the woman say anything to you when she gave
15 you the key, the baggage key?

16 "A This is the case Cho asked me to bring to you.

17 "Q That is what the woman said. What about the
18 keys?

19 "A She said that is the key, you take it.

20 "Q Did you turn the keys over to the Government
21 when they got you off the boat?

22 "A I didn't give it to the Customs. I gave it
23 to Cheung because Cheung asked me what is the key for, and
24 I said you take it.

25 "Q You gave the keys to Mr. Cheung, is that correct?

1 44 rkmch

"Ting

2 "A Yes, sir, Cheung.

3 "Q You indicated on your direct examination by
4 the Government something about the fact that you could
5 not give the suitcase of clothes to Mr. Cheung because
6 they were checked in New York. Where was this suitcase
7 with narcotics checked to?

8 "A This one I was told if I stopped anywhere in
9 the United States he would come to pick up, Cho.

10 "Q The question that I asked was, he said another
11 suitcase was checked in New York. Where was this one
12 checked to or was it checked or whatever he meant by that.

13 "A What do you mean by checked?

14 "Q I meant whatever you meant when you said
15 checked in relation to Cho's other suitcase.

16 "A No, I didn't check this in. I didn't check
17 this in.

18 "Q Mr. Ting, what led you to believe that somebody
19 was going to pay you a thousand dollars, which you
20 testified to on direct, that somebody was going to pay you
21 a thousand dollars in U.S. money to bring a suitcase of
22 food and then was going to pay you a certain amount for
23 every 2 pounds after you got to the United States? What
24 kind of food did you think it was?

25 "A I thought it was some kind of Chinese food.

1 45 rkmch

"Ting

2 "Q Mr. Ting, come and look into this suitcase
3 and you tell me what kind of Chinese food that looks like."

4 There was no answer to that question.

5 THE COURT: I will strike that question out.

6 MR. ROSENTHAL: "Q Mr. Ting, when you pled
7 guilty here Monday morning, did you believe that you could
8 be sentenced by this Court to a term indicated because you
9 brought in Chinese herbs or medicine?

10 "A I didn't think so because that was Chinese
11 herbs or Chinese medicine.

12 "Q I am sorry?

13 "A I didn't think they would sentence me.

14 "Q Because of the Chinese herbs?

15 "A Yes.

16 "Q That was not too clear. Would you forget it
17 if the Judge said you would get 15 years in a prison cell?

18 "A At that time I might forget it because I don't
19 have good memory and I had a headache that day."

20 That is all of the May 15 transcript, your
21 Honor.

22 THE COURT: At this time is there any part
23 of the May 15 transcript that was not read that you want
24 to read, Mr. Engel?

25 MR. ENGEL: I would like to defer that decision

2 rkmch

"Ting

* * * * *

as a witness on behalf of the defendant Cheung, and
examination and cross-examination was as follows:

"THE COURT: State your name.

"THE WITNESS: Yee Fong Ting.

"DIRECT EXAMINATION

"BY MR. RUSSELL:

"Q Mr. Ting, what is your occupation?

"A I am a sailor, upper deck.

"Q You are a citizen of what country?

"A Republic of China.

"Q Are you a resident of the United States?

"A No. No, sir.

"Q Did you yesterday plead guilty to a violation
of the United States laws?

"A Yes.

"Q Did you commit this crime on or about April 5,
1972?

"A Yes.

"Q Do you know Sammy Cho?

"A Yes.

"Q Do you know Kin Ping Cheung?

"A Yes.

"Q Were you a seaman between February and April,
1972, on the motor vessel known as the Laomedon?

1 3 rkmch

"Ting

2 "A Yes.

3 "Q When did that ship commence its voyage?

4 "A In February of 1972.

5 "Q What port?

6 "A Dodge Island.

7 "Q No. Where did the ship begin its voyage?

8 "A Somewhere in the Far East.

9 "Q What port?

10 "A What port did it come from?

11 "Q That is correct.

12 "A The ship started from Hong Kong to the
13 Philippines. At the Philippines go to Japan, to Panama.
14 From Panama to Kingston, Jamaica, and from Kingston,
15 Jamaica, to Miami.

16 "Q Have you previously testified in this case as
17 a Government witness?

18 "A Yes.

19 "Q Did you in January or February of 1972 have a
20 meeting with any person in Hong Kong?

21 "A Yes. It was during January 12, something
22 like that, he says, and he met Mr. Cheung in Hong Kong
23 and he would tell him he would have a suitcase, clothing.

24 "Q Clothes?

25 "A Clothing. Then about a week later this other

1 4 rkmch

"Ting

2 woman bring up the suitcase. She tell me there was some
3 kind of medicine in the suitcase, and she give me \$1,000
4 to deliver to the United States.

5 "Q Whom did he meet with in Hong Kong, what
6 persons?

7 "A Yes. He met in Hong Kong. Tell him to deliver
8 the suitcase is Sammy Cho.

9 "Q Sammy Cho?

10 "A Yes.

11 "Q Who else did he meet with other than Sammy
12 Cho?

13 "A Now he met with Sammy Cho so Sammy Cho send
14 him some woman he doesn't know to bring this suitcase.

15 "Q What did Sammy Cho ask him to do?

16 "A Now he was telling him to tell me to deliver
17 the suitcase and give him \$1,000 American and the suitcase
18 arrived in the United States. They have to call him to
19 let somebody know and he would pick it up.

20 "Q Whom was he to call?

21 "A The ship was in New York so I called the
22 association in New York and tried to locate Sammy Cho.
23 At that time Sammy Cho was not in the club, not association,
24 I mean, the Chinese association. So Mr. Kin Ping Cheung,
25 Mr. Cheung answered the phone at the time he was there, and

1 5 rkmch "Ting 715
2 he was to tell the ship to go to Miami so he come over and
3 pick up the suitcase in Miami.
4 "Q Did you, Mr. Ting, say the ship was in New York?
5 "A The ship was New York. It was Panama and called
6 New York, sir.
7 "Q Did he, in Hong Kong -- did you in Hong Kong
8 meet with anybody else, anyone else other than Sammy
9 Cho and, if so, whom?
10 "A During the meeting in Hong Kong, Sammy Cho and
11 Mr. Cheung and this other fellow who worked on the dock,
12 the name is Wong.
13 "Q What, if anything, did Mr. Cheung ask Mr. Ting
14 to do?
15 "A He said only to tell him to deliver suitcase to
16 New York, the clothing suitcase.
17 "Q What was in the suitcase that Mr. Cheung asked
18 Mr. Ting to deliver to New York on his ship?
19 "A Yes. That was clothing delivered to the United
20 States.
21 "Q Does he know what clothing was contained; if so,
22 tell us.
23 "A It was in the suitcase, he says. One overcoat,
24 two suits and four shirts and one vase.
25 "Q Vase?

1 6 rkmch

"Ting

2 "A Yes.

3 "Q Which suitcase did you receive first, the suitcase
4 filled with clothing for Mr. Cheung or the suitcase filled
5 with contraband from someone else?

6 "A It was in the clothing suitcase first.

7 "Q How long after the suitcase filled with clothing
8 did the other suitcase come?

9 "A About two weeks later..

10 "Q Sho delivered the suitcase full of clothing?

11 "A Mr. Cheung.

12 "Q Who delivered the suitcase full of heroin?

13 "A He told him that the woman, Sammy Cho's friend,
14 a woman delivered that suitcase, the heroin.

15 "Q Did you ever discuss delivering the heroin or
16 any other contraband with Mr. Cheung?

17 "A No. He didn't know nothing about it. He said
18 the only thing he know was for the medicine or some kind of
19 stuff in the suitcase.

20 "Q When did you first learn that the suitcase
21 delivered by Sammy Cho's woman was filled with contraband,
22 heroin?

23 "A Pardon me. I don't get it.

24 "Q When did you first learn that the suitcase
25 delivered by Sammy Cho's woman was filled with heroin?

1 7 rkmch

"Ting

2 "A Well, I don't know what was inside. All I know
3 is some kind of medicine or something.

4 "Q Did you ever open the suitcase delivered by
5 Sammy Cho's woman while the ship was en route from Hong
6 Kong to Miami?

7 "A He opened the suitcase during the second day the
8 ship was in ocean. so he looked at it, saw was a white
9 powder, so he doesn't know. , He still thinks it's medicine.

10 "Q Where on the ship did you store the suitcase
11 given to you by Sammy Cho's woman?

12 "A He doesn't know the woman so who delivered the
13 suitcase, she give him the thousand dollars; he doesn't
14 know the woman.

15 "Q Where on the ship did you keep the suitcase?

16 "A I put it underneath the bed.

17 "Q Where on the ship did you keep Mr. Cheung's
18 suitcase filled with clothing?

19 "A He put it on the locker on the ship, but that
20 suitcase he had registered, registered with the Customs
21 on the ship.

22 "Q Mr. Ting, incidentally, have you ever spoken
23 to me prior to today?

24 "A No.

25 "Q When your ship got to Panama, to whom did you

1 8 rkmch

"Ting

2 initiate a telephone call?

3 "Whom did you place the call to when your ship
4 reached Panama?

5 "A I called the New York Association and tried to
6 locate Mr. Sammy Cho. At that time Mr. Sammy Cho was not
7 at the Association, so I asked for Mr. Cheung on the
8 telephone. He gave the message to Mr. Cheung that Sammy
9 Cho can't come in. The clothing has arrived, tell him to
10 come down to Miami and pick up the medicine.

11 "Q And you never spoke with Sammy Cho by telephone
12 after the ship left Hong Kong; is that correct?

13 "A No.

14 "Q On what date did your ship arrive in Miami?

15 "A April 5.

16 "Q Did you see Kin Ping Cheung on that date?

17 "A Yes, April 5 during the night.

18 "Q Did you give Kin Ping Cheung his clothes on that
19 day?

20 "A No, he didn't give him the clothing suitcase.

21 "Q Why not, sir?

22 "A He was registered in Customs clothing suitcase,
23 supposed to be given in New York City.

24 "Q I don't really understand, Mr. Ting. Did you
25 put the suitcase in some Customs registry that you could

1 9 rkmch

"Ting

2 not get it out of until the suitcase reached a
3 certain destination?

4 "A Because it's registered to deliver to New York.

5 "Q It's registered what?

6 "A To New York.

7 "Q What did you say to Mr. Cheung when he asked you
8 for his clothing on April 5, 1972?

9 "A Mr. Cheung went to the ship, so I tell him,
10 Mr. Cheung, was to go to ship. Then he tell him the
11 suitcase, but I will carry down to the car, but he
12 knows Mr. Sammy Cho is downstairs in the car. He was asking
13 Mr. Cheung. Mr. Sammy Cho is down in the car, and he say
14 yes, and he said I will carry suitcase down to the car.

15 "Q Who carried the suitcase to the car?

16 "A I bring down the suitcase.

17 "Q Did Mr. Cheung to your knowledge know what was
18 in the suitcase?

19 "A He said I understand what is in the suitcase but
20 Mr. Cheung doesn't know.

21 "Q To whom did you give the keys to the suitcase?

22 "A I gave the key to Mr. Cheung, got Mr Cheung to
23 give it to Sammy Cho.

24 "Q You have pled guilty to a violation of the
25 United States laws. Has the Government made you any promise

1 10 rkmch "Ting

2 or made any threats to you?

3 "A Before I don't know. Now I am guilty of violation
4 of laws."

5 That was stricken also.

6 THE COURT: If it was stricken, the jury will
7 disregard it.

8 MR. ROSENTHAL: "By Mr. Kokus:

9 "Q Mr. Ting, when was the first time you met Mr.
10 Cheung?

11 "A I met him January 20 in Hong Kong the first
12 time.

13 "Q Who was with him when you met him?

14 "A Sammy Cho.

15 "Q Did you have any discussion with him at that
16 time?

17 "Excuse me. Did you have any discussion with
18 Mr. Cheung at that time?

19 "A Yes. We discussed bringing suitcase of clothes
20 to the United States.

21 "Q Who discussed that?

22 "A Him and me.

23 "Q Mr. Cheung?

24 "A Yes.

25 "Q Did Mr. Cho talk to you during that time, Sammy

1 11 rkmch

"Ting

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2 Cho?

3 "A No. That was a week later he told me about
4 the suitcase a second time, Sammy Cho.

5 "Q The question was, did Sammy Cho say anything to
6 you during that conversation when you were talking to
7 Mr. Cheung?

8 "A I discussed the first suitcase with Mr. Cheung,
9 then discussed it with Sammy, Cho. Sammy Cho asked me, I got
10 a suitcase too, to bring to the United States. That means
11 the medicine case I am talking about.

12 "Q During this conversation you were having with
13 Mr. Cheung in Mr. Cho's presence, was there any discussion
14 concerning monies during that time?

15 "A Yes. Sammy Cho would tell me, give me \$1,000
16 and I would deliver that suitcase.

17 "Q Was there any other discussion during that time
18 concerning monies?

"A To tell me the thing arrive in New York, he give
me about \$300 or pounds.

21 "MR. RUSSELL: Who is 'he'?

22 "THE WITNESS: Sammy Cho.

23 "Q Was this the suitcase that Mr. Cheung gave you
24 in Hong Kong?

25 "A Sammy Cho sent a woman over with that. That is

1 12 rkmch "Ting

2 the suitcase she bring.

3 "Q What type of suitcase did Mr. Cheung give you
4 in Hong Kong?

5 "A The color was red and black. Mr. Cheung give
6 me the suitcase.

7 "Q Red and black?

8 "A Yes.

9 "Q How many suitcases did Mr. Cheung give you?

10 "A He gave me only one.

11 "Q Sir, do you recall testifying here during the
12 week of May 15?

13 "A April 15 or May 15, yes, I remember.

14 "Q What kind of overcoat was in Mr. Cheung's
15 suitcase?

16 "A It was a dark blue, the overcoat, a Chinese coat.

17 "Q What type of suits were in the suitcase?

18 "A I didn't pay much attention to the color of the
19 suits.

20 "Q Were these business suits?

21 "A A regular suit.

22 "Q You stated there were four shirts in the suitcase.
23 What type of shirts?

24 "A I don't know exactly how much. They have a white
25 color and other mixed colors.

2 "Q What type of shirt?

3 "A Most like my shirt, light."

4 Page 133.

5 "Q Mr. Ting, do you own any suitcase?

6 "A Yes, I have suitcase.

7 "Q Was that suitcase on the ship?

8 "A Yes.

9 "Q Where was it on the ship?

10 "A In the cassock.

11 "Q Where you live?

12 "A Yes.

13 "Q Can you describe that suitcase?

14 "A Yes.

15 "Q Please describe it for us.

16 "A Its color is black and red. I have some clothes
17 in it, my clothes in it.

18 "Q Would that be a plaid suitcase?

19 "A With a zipper.

20 "Q He was indicating something about the zipper?

21 "A Yes. It opened with a zipper. The suitcase had
22 a zipper.

23 "Q It opens all the way around?

24 "A Yes.

25 "Q What was in the suitcase?

1 14 rkmch

"Ting

2 "A It was my slacks and some of the other clothes.

3 "Q Where was Mr. Cheung's suitcase?

4 "A It's on the closet, too.

5 "Q Is it in the same closet?

6 "A It's next to his suitcase.

7 "Q Next to it?

8 "A Next compartment.

9 "Q What does he mean by compartment?

10 "A You see, my suitcase is bigger. Mr. Cheung's
11 suitcase is a little smaller. His suitcase was on the
12 inside of the closet. My suitcase was outside.

13 "Q You stated that Mr. Cheung's suitcase was red
14 and black?

15 "A All the same like my color, red and black.

16 "Q Did it have a lock on it or was it a zipper
17 suitcase?

18 "A My suitcase, the zipper is on the top, but his
19 suitcase, is on the side.

20 "Q Were the clothes in Mr. Cheung's suitcase new
21 or used clothes?

22 "A I can't tell whether it was new or old.

23 "Q Was the suitcase called half-empty? How were
24 the clothes packed?

25 "A It's not too full.

1 15 rkmch

2 "Q How full was your suitcase?

3 "A Not too much clothes in my suitcase.

4 "Q During the night of your arrest, do you remember
5 speaking to federal agents?

6 "A The night that I was arrested, I don't know what
7 is. I don't know what I talked to the Government agents.

8 "Q Do you remember saying anything to federal
9 agents?

10 "A Yes. I was talking to four persons, but the only
11 thing I can remember, they talk about the clothes in the
12 suitcase.

13 "Q Did you say something else to any federal agents
14 outside of the fact there were clothes in the subject
15 suitcase?

16 "A I don't know. I can't think of it, I said.

17 "Q Excuse me?

18 "A I said I can't think I have said anything else
besides the clothes in the suitcase.

19 "Q Did you talk about any narcotics that night?

20 "A I don't know any, nothing. The only thing, one
21 interpreter asked me if that was narcotics, was narcotics
22 in the suitcase.
23

24 "Q Do you remember telling the agents who gave you
25 the money?

1 16 rkmch

2 "A Yes. That was Sammy Cho gave me \$1,000.

3 "Q Do you remember telling the a s on that night
4 that Mr. Cheung gave you the thousand dollars?

5 "A I can't remember, because I was so scared, I
6 was so nervous, I was so dizzy.

7 "Q Mr. Ting, isn't this suitcase in fact your
8 suitcase?

9 "A It was in Hong Kong delivered by woman. That is
10 the suitcase that I received.

11 "Q During the early hours of the morning of April 6,
12 do you remember saying that this suitcase here was your
13 suitcase and that you transferred the heroin from the plaid
14 suitcase into this one when you were out at sea, and you kept
15 the new one for yourself?

16 "A Yes, I do. I changed the suitcase, yes, sir.
17 Transferred the thing to the other suitcase.

18 "Q Which of the two plaid suitcases did you transfer
the heroin from?

19 "A Yes. I take the other suitcase that were my
20 clothes out of it and transfer to the other and exchange
21 the narcotics, yes.

22 "Q Was that the bigger of the two plaid suitcases?

23 "A Yes. The other suitcase is bigger than this one.

24 "Q Mr. Ting, in fact this was not the suitcase that
25

1 17 rkmch "Ting
2 the heroin was originally in?

3 "A Yes.

4 "Q What denominations were given to you in money?
5 What denominations and what nationality money?

6 "A It was Hong Kong money, but exchanged with the
7 American money, it was American \$1,000.

8 "Q Sir, do you recall during the early morning
9 hours of April 6 telling the federal agents that you
10 were to be paid in heroin and not money?

11 "A I received the money in New York but get the
12 money when I get to New York."

13 MR. ROSENTHAL: That was stricken.

14 THE COURT: Strike it out.

15 MR. ROSENTHAL: "A I tell him and receive the
16 thing and I want to get the money in New York. That is
17 what I would tell him.

18 "Q Mr. Ting, do you remember telling the federal
19 agents during the early morning hours of April 6 that
20 instead of being paid by money in New York, you were to be
21 paid by heroin?

22 "A I can't remember whether they pay me by heroin.

23 "Q Who are 'they'?

24 "A I don't know. I think the Government agent,
25 American Customs or something.

18 rkmch

"Ting

"Q Sir, did you ever meet Cheung in New York?

"A I met him two years ago in New York, yes.

"Q During your meeting with Mr. Cheung in New York, did you ever at any time in Hong Kong discuss with Mr. Cheung the importation of heroin?

"A No, I never discussed it, never tell him.

"Q Do you remember stating in the early morning hours of April 6, 1972 to federal agents that you discussed the importation of heroin with Mr. Cheung and Mr. Cho in Hong Kong?

"A I was so nervous that morning, I don't know. I can't remember. That night, April 6, I talked to the American Government people.

"Q Where were you born?

"A I was born in Nin Po, China.

"Q How long did you live there?

"A Over 20 years."

THE COURT: Wasn't all this read before?

MR. ROSENTHAL: Just some of it.

THE COURT: I don't think you need read it again.

MR. ROSENTHAL: "Q Mr. Ting, you mentioned on cross-examination you transferred the heroin to a suitcase that was over there. Who delivered the suitcase from which you transferred the heroin to that suitcase?

1 19 rkmch

2 "A Yes. I transferred from the heroin to this
3 suitcase.

4 "Q Who delivered the suitcase from which you trans-
5 ferred the heroin?

6 "A It was the woman in Hong Kong that delivered
7 the suitcase.

8 "Q Which woman?

9 "A It's not Sammy Cho's wife. I don't know that
10 woman.

11 "Q How did you know she was connected with Sammy Cho?

12 "A Sammy Cho told me before the woman, that the
13 case would be delivered by woman and also give me the
14 money.

15 "Q Have you ever been convicted of a crime in China
16 or anyplace else in the world?

17 "A No.

18 "Q How old are you?

19 "A 48 years old.

20 "Q Did you go to school in China?

21 "A Yes, I had been to school in China.

22 "Q You stated on cross-examination, Mr. Ting, that
23 you were nervous on April 5 and the early morning hours of
24 April 5. Are you nervous now?

25 "A The 5th I was arrested, April 6 in the morning I

1 20 rkmch

"Ting

2 was very, very nervous. He would tell me it was heroin and
3 right now I am still scared.

4 "Q Did you tell the truth on April 5 and April 6
5 to the federal officers?

6 "A I am not tell the trust.

7 "THE COURT: What did he say?

8 "MR. KOKUS: He said he not tell the truth.

9 "BY MR. RUSSELL:

10 "Q Do you remember, Mr. Ting, coming into court and
11 telling that you did not tell the truth before and that you
12 now wish to tell the truth?

13 "A Yes, I do.

14 "Q Are you now telling the truth?

15 "A Yes, I do tell the truth now."

16 MR. ROSENTHAL: That is all for June 5, 1972 in
17 Florida.

18 I have one more matter I wish to read, and that
19 is the grand jury testimony of the witness Ting Yee Pong
20 on October 6, 1972 --

21 THE COURT: I am going to ask you, don't read
22 things that are not in dispute, like his age, his birth
23 date. If you have an issue about those matters, you can
24 read it. Let's save ourselves from having to hear that
25 again.

* * * * *

rkjb 23

I like to think I have a positive nature and I like to think rightly or wrongly, I might appeal to some people and I might annoy other people, but if I have done anything to annoy any one of you or if you think that I have misstated or done anything during the course of this trial that you didn't like and that you felt was improper, please, hold it against me. Charge me with it, give me a bill for it, but don't give it to my client. You are dealing with the most precious commodity in the world in connection with this case. You are dealing with the liberty you are dealing with a human being. You are dealing with his right to walk the streets without having to implicate other people and get a pass from the United States Attorney, and a pass from the Drug Enforcement Administration. You are dealing with his rights.

I am certain that each of you realizes the importance of this. It's important to the government, it's important to the defendants and it's important to each of you because you are all part of the community in which this case is being tried and what you do, either puts a stamp of approval or puts a halt to the role that the government has adopted and the method that they have adopted in this case and us by your verdict, and you have a right to say by your verdict to the government, we don't want you to

1 rkjb 24

2 make deals with a man like Yui Kwei Sang so that he can
3 earn 15 or 20,000 a year as a chef and be a respected
4 member of the community and perhaps use his ill-gotten
5 gains which he has hidden somewhere. We don't want deals
6 with men like that and although the government will argue
7 and it has always argued that it's important to make deals
8 with people of that ilk so they can get other more important
9 people, that just ain't the case here and there is no pre-
10 tense and no claim.

11 The way you can do it is by a verdict of not
12 guilty and that would be a message loud and clear to the
13 power that be as to their methods, but aside from that,
14 on the facts of this case as presented to you and the testi-
15 mony you heard in court and the exhibits that have been
16 presented to you, for instance, Mr. Ting writing back in
17 October of '74 and he still didn't say he lied, he said if
18 Sammy Cho appealed again, I would be very pleased to be
19 a witness for the government. He didn't say he would be
20 pleased to be a witness for the government against Kin
21 Ping Cheung but somewhere along the line, somebody, some-
22 how persuaded him to be a witness the way he testified
23 here.

24 I leave you with my client. When I finish speak-
25 ing, there is not another word that anybody can say in his

* * * * *

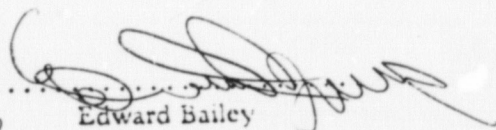
ROSENTHAL & HERMAN

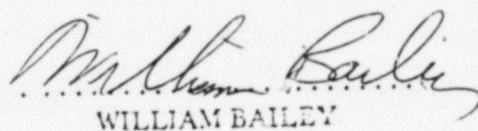
AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK,
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 24 day of Sept. , 19 76 at No. 1 St. Andrews Pl., NYC deponent served the within *Appendix* upon U.S. Atty., So. Dist. of N.Y. the Appellee herein, by delivering a true copy thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the appellee therein.

Sworn to before me,
this 24 day of Sept. 19 76


Edward Bailey


WILLIAM BAILEY

Notary Public, State of New York

No. 43-0132945

Qualified in Richmond County

Commission Expires March 30, ~~1977~~ 1978